Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 1 of 138 PageID #: 1624

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC,

33659

Plaintiff,

INDEX NO. FILE NO. 13816.0

-against-

SUMMONS Place of Venue is Plaintiff's place of business:

Emesto Nunez, Evelyn Martinez,

2246 Webster Avenue Bronx, NY 10457

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum, \$7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011

By: Gary Kavallich, Esq., Kayulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Avenue ൃSuite 500C Port Chester, NY 10573

(914) 355-2074

TO TO THE STATE OF Defendant's Address: Ernesto Nunez 550 Audubon Avenue, Apt. 56 New York, NY 10040-3365

Evelyn Martinez, 707 N. 6th Street Apt, 2F Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

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COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

<u>SECOND ACTION</u>: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index	No.	33659/1	1
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Attomover	V avai	fich	₽r	Associates,	P.C.
AUTORITECT	TO M VIII	111.75	EX.	/133UU14LW04	T

ttomevs: Kavu	ilich & Associates, P.C.		2016
ddress: 30 Cl	hurch Street, Suite 26, New Rochelle, NY	0801 File No. 1	3816
	2246 WEBSTER AVENUE HE	FC,	
	vs. ERNESTO NUNEZ,		
	EVELYN MARTINEZ,		
<u>Aston G. Evans II</u> Deponent is not a At: 550 Audobor	k County of Nassau SS: i. being duly sworn deposes and says: a party herein, is over 18 years of age. On May 14, 20 n Avenue, Apt. 56, New York, NY 10049-3365erve RNESTO NUNEZ, Defendant therin named.	011_at <u>8:00p.m.</u> of the within Summons	and
Individual By	delivering a true copy of each to said recipient: deported to be the person described as said person therein.	nent knew the person	-A. 3
Corporation By	y delivering to and leaving with and erson so served and authorized to accept service on b	that deponent knew the chalf of the Corporation	
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to Door [y affixing a true copy of each to the door of said pren } actual place of business [] dwelling house (place	of abode) within the sa	_
[X] d	In May 16, 2011 deponent completed service under the lepositing a copy of the Summons and Complaint to the class properly addressed envelope marked "Personal acceptation under the exclusive care and custody of the f New York. Deponent was unable, with due diligence to find the paying called thereat:	nd Confidential" in an o United States Post Offi	ce in the State
	On the day of at On the day of at On the day of at		
Description A	description of the Defendant, or other person served olor of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age: 45-50 He	on behalf of the Defend ight: \$75" Weight: <u>1501</u>	ant <u>.BS</u>
f X 1	Deponent asked person spoken to whether the recipier service of the United States Government or of the States formed that the recipient is <u>not</u> . Recipient wore civil	ta of New York and wa	\$
	oe" stated that the Defendant is not in the military.	1610	y
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AFFIDAVIT OF SERVICE

CIVIL COU	RT OF THE CITY OF NEW YORK	Index No. 33659/11	
COUNTY	F BRONX	Filed:	
Attorneys: K	avulich & Associates, P.C.		
Address: 50	Church Street, Suite 26, New Rochelle, N		
	2246 WEBSTER AVENUE	HDFC.	
	ERNESTO NUNEZ, EVELYN MARTINE	Z.	
State of New	York County of Nassau SS:		
Aston G. Eva	ns II, being duly sworn deposes and says: tot a party herein, is over 18 years of age. On <u>May 13</u>	2017 2-22	
At <u>: 707 N. 6^t</u>	Street, Apt. 2F, Allentown, PA 18102-3365 serve MARTINEZ, Defendant therin named.	d the within Summons and Complaint	
Individual	By delivering a true copy of each to said recipient: d served to be the person described as said person there	eponent knew the person in.	
Corporation []	By delivering to and leaving witha appearson so served and authorized to accept service or	nd that deponent knew the behalf of the Corporation	
Suitable Age Person [X]	By delivering a true copy of each to a person of suit Said premises is recipients [] actual place of busine state.	able age and discretion ss [X] dwelling house within the	
Affixing to Door []	By affixing a true copy of each to the door of said prof [] actual place of business [] dwelling house (place)	emises, which is recipients ce of abode) within the state	
Mail Copy [X] On May 14, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1st Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York. Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:			
	On the day of at		
	On the day of at		
	On the day of at		
Description [] Sex: F	A description of the Defendant, or other person served Color of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age: 35-40 H	on behalf of the Defendant eight: 5'3" Weight: 1631.BS	
Military Svcc	Deponent asked person spoken to whether the recipio	nt was presently in military	
[X]	service of the United States Government or of the Strinformed that the recipient is not. Recipient wore civil	te of New Verk and	
Other [X] "Jane	Doe" stated that the Defendant is not in the military.	man clothes and no military uniform	
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AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index No. 33659/11 Filed:

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816 14255

2246 WEBSTER AVENUE HDFC.

VS.

	ERNESTO NUNEZ
	EVELYN MARTINEZ,
State of New	York County of Nassau SS:
Aston G. Eva	ns II. being duly swom deposes and says:
Deponent is n	ot a party herein, is over 18 years of age. On May 14, 2011 at 8:00p.m.
At: 550 Audo	thon Avenue, Apt. 56, New York, NY 10040-3365erved the within Summons and
Complaint or	n: ERNESTO NUNEZ, Defendant therin named.
Individual	By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.
Corporation	By delivering to and leaving with and that deponent knew the person so served and authorized to accept service on behalf of the Corporation
Suitable Age Person [X]	By delivering a true copy of each to a person of suitable age and discretion Said premises is recipients [] actual place of business [X] dwelling house within the state.
Affixing	By affixing a true copy of each to the door of said premises, which is recipients
to Door []	[] actual place of business [] dwelling house (place of abode) within the state
Mail Copy	On May 16, 2011 deponent completed service under the last two sections by
[X]	depositing a copy of the Summons and Complaint to the above address in a 1 st
	Class properly addressed envelope marked "Personal and Confidential" in an official
	depository under the exclusive care and custody of the United States Post Office in the State.
	of New York.
and discretion	Deponent was unable, with due diligence to find the recipient or a person of suitable age having called thereat:
	On the day of at
	On the day of at
	On the day of at

On the day of

Description A description of the Defendant, or other person served on behalf of the Defendant [] Sex: F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS

Military Svce Deponent asked person spoken to whether the recipient was presently in military service of the United States Government or of the State of New York and was [X] informed that the recipient is not. Recipient wore civilian clothes and no military uniform Other

[X] "Jane Doe" stated that the Defendant is not in the military.

Aston G. Evans II

LIC# 1220069

Sworn to before

Chent March

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Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 6 of 138 PageID #: 1629

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index No. 33659/11 Filed: ____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816 142 55

2246 WEBSTER AVENUE HDFC.

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	V\$,	
	ERNESTO NUNEZ,	
	EVELYN MARTINEZ,	
State of New	York County of Nassau SS:	
	ns IL being duly sworn deposes and says:	
	not a party herein, is over 18 years of age. On May 13, 2011 at 7:23p.m.	
At: 707 14.6"	Street, Apt. 2F, Atlentown, PA 18102-3365 served the within Summons and Complain	nt
on: EVELY	N MARTINEZ, Defendant therin named.	
Individual	By delivering a true copy of each to said recipient: deponent knew the person	
a :	served to be the person described as said person therein.	
Corporation	By delivering to and leaving with and that deponent knew the	
()	person so served and authorized to accept service on behalf of the Corporation	
		:
Suitable Age	By delivering a true copy of each to a person of suitable age and discretion	
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Person	Said premises is recipients [] actual place of business [X] dwelling house within the	c
[X]	state.	ν.
Affixing	By affixing a true copy of each to the door of said premises, which is recipients	
to Door	[] actual place of business [] dwelling house (place of abode) within the state	
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Mail Copy	On May 14, 2011 deponent completed service under the last two sections by	
[X]	depositing a copy of the Summons and Complaint to the above address in a 1#	
	Class properly addressed envelope marked "Personal and Confidential" in an official	
	depository under the exclusive care and custody of the United States Post Office in the St	ate
	of New York.	Ale
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Description	A description of the Defendant, or other person served on behalf of the Defendant	
П 2¢х <u>: Г.</u>	Color of skin: BRN Color of Hair: BLK Age: 35-40 Height: 5'3" Weight: 163LBS	
Military Svc	Deponent asked person spoken to whether the recipient was presently in military	
[X]	SOLVING OF THE CHRIST SERIES COVERNMENT OF AFTER A CARL AFTER A STATE OF THE ATTER A STATE OF	
	informed that the recipient is <u>not</u> . Recipient wore civilian clothes and no military uniform	
Other	<i>j</i> 1	i).
[X] "Jane	Doe" stated that the Defendant is not in the military.	
		
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	Aston G. Evans II	
	LIC# 1220069	
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V	Lic. 70. 01711. A6042814	
C	Page	6
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CIVIL COURT OF THE CITY OF NEW YORK NO CALENDAR NUMBER ASSIGNED INDEX NO. 33659/11 COUNTY OF BRONX: PART 34 INDEX NO. 33659/11 FILE NO. 14285		
2246 WEBSTER AVENUE, HDFC,		
Plaintiff,	<u>TO AMEND TI</u>	HE
- against -	<u>SUMMONS AT</u> COMPLAINT	<u>7D</u>
ERNESTO NUNEZ, EVELYN MART	INEZ, po oldj	4.5
Defenda		
MOTION BY:		7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
		1.3 1.3 2.3 2.5
DATE, TIME AND PLACE OF HEARING:	October 18, 2011 9:30 A.M. Motion Term: Part 34, Room 5 Civil Court of the City of New County of Bronx 851 Grand Concourse Bronx, NY 10451	
SUPPORTING PAPERS:	Affirmation of Gary M. Kavuli dated October 5, 2011, and upopapers and proceedings heretof herein.	n all the

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RELIEF REQUESTED:

An Order amending the summons and complaint nuc pro tunc to reflect a prior judgment against the Defendant.

Dated:

Port Chester, New York

October 5, 2011

Yours Etc.,

Kavulich & Associates, P.C. By: Gary M. Kavulich, Esq.,

181 Westchester Ave., Suite 500-C

Port Chester, NY 10573

(914) 355-2074

To:

Ernesto Nunez

550 Audubon Avenue, Apt. 56

New York, NY 10040

Evelyn Martinez

707 N. 6th Street, Apt. 2F Allentown, PA 18102

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34	1NDEX NO. 33659/11 FILE NO. 14285			
2246 WEBSTER AVENUE, HDFC,				
Plaintiff.	<u>AFFIRMATION</u>			
- against -				
ERNESTO NUNEZ, EVELYN MARTINEZ,				
Defendant.				
Gary M. Kayulich, Esq., an attorney duly adn				

Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the Courts of the State of New York hereby affirms the following under the penalty of perjury.

- I am a member of the law firm of Kavulich & Associates, P.C., attorneys for the Plaintiff, herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated to be based upon information and belief, and as to those matters I believe them to be true. The basis of my belief is information furnished to me by my client, information contained within the Court's file, and information contained within the file as maintained by your affirmant's office.
- 2. I make this affirmation in support of the Plaintiff's instant motion to amend the summons and complaint nunc pro tune, and for such other and further relief as this Court deems just and proper. Annexed hereto as Exhibit "1" is the proposed Amended Summons and Complaint.
- 3. The Plaintiff commenced the instant proceeding due to the Defendant's breach of a lease for the letting of real property known as and located at 2246 Webster Avenue, Apt. 3, Bronx, NY.
- 4. On May 13, 2011, the Plaintiff served the Defendant with a copy of the Summons and Complaint. Annexed hereto as Exhibit "2" is a copy of the original Summons and Complaint. Annexed hereto as Exhibit "3" is a copy of the affidavit of service.
- 5. To date, the Defendant has failed to interpose an answer to the Plaintiff's summons and complaint.
- 6. As such, the Plaintiff has moved for a default judgment on submission.
 Annexed hereto as Exhibit "4" is the Plaintiff's submission.

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 10 of 138 PageID #: 1633

- 7. Thereafter, the Clerk rejected said judgment stating, "move to amend pleadings to reflect facts constituting claim." Annexed hereto as Exhibit "5" is a copy of the Clerk's Judgment Rejection Notification.
- 8. CPLR 3025(b) states that, "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just...."
- 9. Upon review and further investigation, it has come to your affirmant's attention that the Plaintiff obtained a prior judgment for a portion of the relief sought in the instant proceeding in a prior proceeding in Housing Court under the index number 46395/05. Annexed hereto as Exhibit "6" is a copy the Decision and Judgment of Possession.
- 10. As such, the Plaintiff now seeks to amend its summons and complaint to reflect the sum which is represented by said judgment.
- 11. The relief sought herein leave to amend the Plaintiff's summons and complaint will have no prejudicial effect on the Defendant as it only serves to reduce the Defendant's monetary liability as alleged by the Plaintiff in its pleadings.
- 12. Conversely, the Plaintiff will be highly prejudiced if the relief sought herein is denied as the Plaintiff will be unable to obtain a judgment in this proceeding.
- 13. Therefore, the Plaintiff requests this Court for leave to amend its Summons and Complaint nuc pro tune to reflect the Plaintiff's prior judgment.

WHEREFORE, your affirmant respectfully requests that the instant motion be granted in all respects and for such other and further relief as to this Court may seem just and proper.

Dated:

Port Chester, New York October 5, 2011

Gary M. Kayuhch

EXHIBIT 1

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX -X	Index No. File No. 14285
2246 WEBSTER AVENUE HDFC.	
Plaintiff,	AMENDED SUMMONS
-against-	Place of Venue is designated
ERNESTO NUNEZ, EVELYN MARTINEZ,	as Plaintiffs' Place of Business:
Defendants.	2246 Webster Avenue Bronx, NY 10457

To the above named Defendant(s):

YOU ARE HEREBY SUMMONED to appear in the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the Clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451 to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with the summons, to serve a notice of appearance on the Plaintiff's attorney within (20) days after the service of this summons, exclusive of the day of service or within 30 days after the service in complete if this summons is not personally delivered to you within the State of New York; and in case of your failure to appear or answer, judgment will be taken against you for the sum of \$3,302.11 with interest thereon from May 1, 2005 together with costs and disbursements of this action.

Dated: October 5, 2011

By: Gary M. Kavutich; Esq. Attorney for Plaintiff Kavulich & Associates, P.C. 181 Westchester Avenue, Suite 500C Port Chester, NY 10573 (914) 355-2074

<u>Defendants' Address:</u>
Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040

Evelyn Martinez 707 N. 6th Street, Apt. 2F Allentown, PA 18102

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

AMENDED COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from Defendanst for breach of a lease agreement in the sum of \$2,802.11 representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages form Defendants for breach of the lease agreement in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other and further relief as the court may deem just.

WHEREFORE: Plaintiff demands judgment (A) on the First Action in the sum of \$2,802.11 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just; (B) on the Second Action in the sum of \$500.00, together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

EXHIBIT 2

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 15 of 138 PageID #:

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC,

Plaintiff,

INDEX NO. FILE NO. 12816-9

14285

-against-

SUMMONS
Place of Venue is Plaintiff's place of business:

Emesto Nunez, Evelyn Martinez,

2246 Webster Avenue Bronx, NY 10457

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the surp of 7,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011

By: Gary Kavalich, Esq., Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Avenue Suite 500C Port Chester, NY 10573 (914) 355-2074

Defendant's Address:

Ernesto Nunez 550 Audubon Avenue, Apt. 56 New York, NY 10040-3365

Evelyn Martinez, 707 N. 6th Street Apt. 2F Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

EXHIBIT 3

CIVIL COUR	AFFIDAVIT OF SER T OF THE CITY OF NEW YORK TRONX	VICE Index No. 33659/ Filed:	11
Attornauer Ka	evulich & Associates, P.C. Church Street, Suite 26, New Rochelle, 2246 WEBSTER AVEN	NY 10801 File No. 1 3816 UE HDFC,	<u>142</u> 85
	vs. ERNESTO NUNE EVELYN MARTI	Z,	
Aston G. Eyer Deponent is n At: 707 N. 6th	fork County of Nassau SS: s II, being duly swom deposes and says: of a party herein, is over 18 years of age. On Mar Street, Apt. 2F, Allentown, PA 18102-3365 SC MARTINEZ, Defendant therin named.	12. 2011 at 7:23p.m.	siaior
Individual	By delivering a true copy of each to said recipies erved to be the person described as said person the	nt: deponent knew the person nerein.	
Corporation []	By delivering to and leaving with	and that deponent knew the te on behalf of the Corporation	2
Suitable Age Person [X]	By delivering a true copy of each to a person of Said premises is recipients [] actual place of bastate.	suitable age and discretion usiness [X] dwelling house within the	· ·
Affixing to Door	By affixing a true copy of each to the door of sa { actual place of business [] dwelling house	id premises, which is recipients (place of abode) within the state	F 22
Mail Copy [X]	On May 14, 2011 deponent completed service undepositing a copy of the Summons and Compla Class properly addressed envelope marked "Per depository under the exclusive care and custody of New York. Deponent was unable, with due diligence to a having called thereat:	int to the above arkiness in a !* sonal and Confidential" in an official of the United States Post Office in the	e State
and orcient	On the day of at		
	On the day of at On the day of at		
Description [] Sex: F	A description of the Defendant, or other person: Color of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age: 35	served on behalf of the Defendant 40 Height; 5'3" Weight: 163LBS	
Military Svo [X]	 Deponent asked person spoken to whether the received of the United States Government or of informed that the recipient is <u>not</u>. Recipient we 	the State of New York and your	(orm
[X] "Jane	Doe" stated that the Defendant is not in the milit	11818/19	7-
-6	Frank Both Marry Fullan Cornelly of Remain Clary Morrel	Aston G. Evans II LIC# 1220069	
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CIVIL COU	AFFIDAVIT OF SERVICE	Index No. 33659/1 Filed:	I
COUNTY O	FBRONX		
Attorneys: K Address: 30	avulich & Associates, P.C. Church Street, Suite 26, New Rochelle, NY	10801 File No. 13816	<u>14</u> 285
	2246 WEBSTER AVENUE H	DFC,	
	VS. ERNESTO NUNEZ. EVELYN MARTINEZ.		
Aston G. Eva Deponent is n At: 550 Audu	York County of Nassan SS: ns II, being duly sworn deposes and says: ot a party herein, is over 18 years of age. On May 14. box Avenue, Apt. S6, New York, NY 10040-3365er a: ERNESTO NUNEZ, Defendant therin named.	2011 at 8:00p.10.	
ladividual	By delivering a true copy of each to said recipient: depertued to be the person described as said person therein	onent knew the person	
Corporation [By delivering to and leaving with an person so served and authorized to accept service on	d that deponent knew the behalf of the Corporation	
Suitable Age Person [X]	By delivering a true copy of each to a person of suital Said premises is recipients [] actual place of businesstate.	ble age and discretion s [X] dwelling house within the	
Affixing to Door	By affixing a true copy of each to the door of said pre [] actual place of business [] dwelling house (place		
Mail Copy [X]	On May 16, 2011 deponent completed service under to depositing a copy of the Summons and Complaint to Class properly addressed envelope marked "Personal depository under the exclusive care and custody of the of New York. Deponent was unable, with due diligence to find the control of the co	the above address in a 1 st and Confidential" in an official b United States Post Office in the St	
and discretio	n having called thereat:	as a second of attending to	en e
	On the day of at On the day of at On the day of at		
[] Sex <u>: F</u>	A description of the Defendant, or other person served Color of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age: 45-50 He	light <u>: 5'5" Weight: 150LBS</u>	
[^)	 Deponent asked person spoken to whether the recipies service of the United States Government or of the States informed that the recipient is not. Recipient wore civil 	46c = 6 k1 72 4 -	_
	Doe" stated that the Defendant is not in the military.	Action .	
Sworn to be		Aston G. Evans II LIC# 1220069	
Ü̈	As of Many Falls Carely of Brus Charl March		
uli Com	. No. 01911. A6061816 wiew Course June 3,20 L G		

EXHIBIT 4

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 21 of 138 PageID #: 1644

COUNTY OF BRONX	INDEX NO. 33659/11
2246 Webster Avenue, HDFC,	
PLAINT(FF(S)	FILE NO. 14285.0 JUDGMENT
-AGAINST-	
Ernesto Nunez . Evelyn Martinez	
•	2246 Webster Avenue Bronx, NY 10457
DEFENDANT(S)	
AMOUNT CLAIMED LESS PMTS ON ACCT.	\$2,802.11
INTEREST FROM 11/1/2005	<u>\$1419</u> .48
COOKE DATE OF THE PARTY	5 42 31.19
COSTS BY STATUTE	\$20,00 \$25.00
SERVICE OF SUMMONS AND COMPLAINT FILING OF SUMMONS AND COMPLAINT	\$45.00 \$45.00
PROSPECTIVE MARSHALL'S FEE	\$40,00
NOTICE OF INQUEST	\$0.00
TRANSCRIPT & DOCKETING	\$0.00
	5130,00 TOTAL 5 43 61.19
THEREIN AND ARE REASONABLE IN AMOUNT AND ANSWER HEREIN HAS EXPIRED AND THE THE STATUTE OF LIMITATIONS HAS NOT EXP. THE PENALTIES OF PERJURY. DATED: WESTCHESTER, NY 7/5/2011 JUDGMENT ENTERED ON SERVICE OF SUMMONS AND COMPLAINT IN THEREIN HAVING BEEN COMPLETED ON 7/4/20 DAYS HAVING ELAPSED. BY FILING ON SAID DAY OF PROOF OF THAND MORE THAN 30 DAYS HAVING ELAPSED DEFENDANT(S) TO APPEAR AND ANSWER HAVING WOON MOTION OF KAVULICH & ASSO 2246 Webster Avenue, HDFC RESIDING AT: 2246 Webster Avenue Bronx, NY 10 RECOVER OF Ernesto Nunez, Evelyn Martinez RESIDING AT: 550 Audubon Avenue Apt. 56 New 1970 No. 6th Street Apt. 2F Allent THE CHACOL STREET OF S. In	FITHE STATE OF NEW YORK, ON OF THE F(S) IN THE ABOVE ENTITLED ACTION, IPECIFIED HAVE BEEN OR WILL BECESSARILY BE MADE OR INCURRED TO UPON FAILURE TO ABSWER THE TIME OF THE DEFENDANT TO APPEAR E SAID DEFENDANT HAS TO APPEARED AND ANSWERED HEREIN. IRED. THE UNDERSITATED AFFIRMS THIS STATEMENT TO BE TRUE UNDER KAVULICH & ASSOCIATES, P.C. BY: GARY KAVULICH, ESQ. 181 WESTCHESTER AVENUE, SUITE 500C PORT CHESTER, NY 10573 HIS ACTION ON THE DEFENDANT(S) 11 WITHIN THE CITY OF NEW YORK ON THAT DAY AND MORE THAN 20 HE SERVICE THEREOF BY SUBSTITUED SERVICE ON DEFENDANT(S) SINCE THE DAY OF COMPLETION OF SERVICE AND THE TIME OF SAID VING EXPIRED, AND CIATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS. ADJUDGED THAT 457 YORK, NY 10040-3365 - £ ENCSTON PARE 2 TOWN, PA 18102-1607 - É VELY MARTINE 2 14.00 MAKING A TOTAL OF \$42 31.41 TOGETHER WITH \$130.00 COSTS AND E SUM OF \$43619 AND THAT PLAINTIFE HAVE EXCENTED
	CLERK

Page 21

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC,

PLAINTIFF(S)

AGAINST

AFFIDAVIT OF FACTS CONSTITUTING THE CLAIM THE DEFAULT AND THE AMOUNT DUE

-massaggg@@@@@im;

Ernesto Nunez, Evelyn Martinez,

DEFENDANT(S)

STATE OF NEW YORK COUNTY OF WESTCHESTER SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PURIURY, THAT DEPONENT IS THE ATTORNEY FOR THE BY ADMINISTRATION SERVICE. ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUED SERVICE OF THE SUMMONS AND COMMENCED BY FOR CAPTER OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF BANACTURE). APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

November, 2005 balance of \$468.31

December, 2005 \$583.45 January, 2006 \$583,45

February, 2006 \$583,45 March, 2006 \$583,45

AT THE AGREED MONTHLY RENTAL OF \$583.45

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH

INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY

RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED. THE CAUSE OF ACTION IN THE WITHIN MATTER ACCRUED IN THE STATE OF NEW YORK WHERE THE STATUTE OF LIMITATIONS ON A SONTRACT, UPON WHICH THE ACTION IS BASED, IS SIX(6) YEARS. THE STATUTE OF LIMITATIONS HAS NOT EXPED.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEFENDENT FOR \$2,892.11 WITH INTEREST FROM 11/1/2005 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION

KAVULICH & ASSOCIATES, P.C. BY: GARY KAVULICH, ESQ.

181 WESTCHESTER AVENUE, SUITE 500C

PORT CHESTER, NY 10573

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COUNT ON

SS:

DATED: WESTCHESTER, NY 7/5/2011

YOURS, ETC., ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF

BEING DULY SWORN, DEPOSES AND SAYS; THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF THAT ON (EACH OF) THE FOLLOWING NAMED DEPENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

BY DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN -A POST OFFICE-OFFICIAL DEPOSITING SAME ENGLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW

SWORN TO BEFORE ME ON

CIVIL COURT OF THE CITY OF NEW YORK	
COONTY OF BRONX	INDEX NO. 33659/11
2246 Webster Avenue, HDFC,	
PLAINTIFF(S)	AFFIRMATION OF MAILING OF ADDITIONAL
-AGAINST-	NOTICE OF SUIT
Ernesto Nunez, Evelyn Martinez	
DEFENDANT(S)	
GARY KAVULICH, ESQ., HEREBY AF.	FIRMS THE FOLLOWING UNDER THE PENALTY OF PERJURY.
1. I AM THE ATTORNEY FOR THE PLAINTIF	
2. THE ABOVE ENTITLED ACTION IS AGAIN UPON NON PAYMENT OF A CONTRACTUAL	
THE ENVELOPE(S) IN AN OFFICIAL DEPOSIT SERVICE WITHIN NEW YORK STATE. SAID! ADDRESSED TO THE DEFENDANT(S), THE E "PERSONAL & CONFIDENTIAL" AND THERE	MMONS AND COMPLAINT IN THE ABOVE ENTITLED ACTION BY DEPOSITING FORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE U.S. POSTAL MAILING WAS BY FIRST CLASS MAIL IN A POSTPAID ENVELOPE(S), PROPERLY NVELOPE(S) BORE THE LEGEND WAS NO INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE EY OR CONCERNED AN ALLEGED DEBT. AT DEFENDANT(S):
LAST KNOWN ADDRESS AT: Emosto Nu Évelyn Martinez ; 70	mez, 1 550 Audubon Avenue Apt. 56 New York, NY 10040-3365 07 N. 6th Street Apt. 2F Allentown, PA 18102-1607
PLACE OF EMPLOYMENT AT:	
THE ENVELOPE BORE THE LEGEND "PERSON WAS NO INDICATION ON THE OUTSIDE OF THE COMMUNICATION WAS FROM AN ATTORNEY.	THE ENVELOPE THAT THE
A KNOWN ADDRESS OF THE DEFENDA	NT AT:
THIS ADDRESS IS NOT THE RESIDENCE OR I	LACE OF EMPLOYMENT OF THE DEFENDANT.
THE AFOREMENTIONED MAILING:	
HANOT BEEN RETURNED UNDELIVER	RABLE BY POSTAL SERVICE.
WAS RETURNED UNDELIVERABLE BY	POSTAL SERVICE AND WAS RE-SELF TO THE DEPENDANT AT:

GARY KAVULICH, ESQ.

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX
3346 1164
2246 Webster Avenue, HDFC.

Index No. 33659/11 File No. 14285.0

Plaintiff,

-against-

AFFIDAVIT OF INVESTIGATOR

Ernesto Nunez, Evelyn Martinez

3547

Defendant(s).

STATE OF NEW YORK

)SS.: 3547

COUNTY OF WESTCHESTER

I am over 18 years of age, am not a party to this action and reside in Westchester County, State of New York.

I have been requested by Kavulich & Associates, P.C. attorney for the Plaintiff, to make an investigation to ascertain if the Defendant(s) Ernesto Nunez is at the present time in military service for the purpose of entry of judgment.

On July 5, 2011, I Denise Miranda, contacted the Defense manpower Date Center concerning the Defendant Ernesto Nuncz military status.

I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not correctly in the military service of the United States and the State of New York (National Guard))

Denise Miranda

Sworn to before p

3 Day of

Notary Public

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6305615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/11/2013

Page 24

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 25 of 138 PageID #: CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX 2246 Webster Avenue, HDFC, Index No. 33659/11 File No. 14285.0 Plaintiff. -against-Evelyn Martinez, Ernesto Nunez, 1227 Defendant(s). STATE OF NEW YORK 1227)SS.: COUNTY OF WESTCHESTER I am over 18 years of age, am not a party to this action and reside in Westchester County. State of New York. I have been requested by Kovulich & Associates, P.C. attorney for the Plaintiff, to make an investigation to ascertain if the Defendant(s) Evelyn Martinez is at the present time in military service for the purpose of entry of judgment. On July 5, 2011, I Denise Miranda, contacted the Defense manpower Date Center concerning the Defendant Evelyn Martinez military status. I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense Manpower Data Center. Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military service of the United States and the State of New York (National Guard). Denise-Miranda Sworn to before ma 5 Day of Notary Public GARY KAVULICH NOTARY PUBLIC-STATE OF NEW YORK NO:02KA6205615

NOTARY PUBLIC-STATE OF NEW YORK NO:02KA6205615 QUALIFIED IN WESTCHESTER COUNTY MY COMMISSION EXPIRES 05/11/2013

Jul-05-2011 07:13:48

Department of Defense Manpower Data Cemer



Military Status Report Pursuant to the Service Members Civil Relief Act

< Last Name	First/Middle	Begin Date		Active Duty End Date	
NUNEZ	ERNESTO	Based on the in	nformation you have fur in indicating the individu	nished, the DMDC does no ual status.	

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary M. Snavely-Dison

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL http://www.dcfenselink.mil/fag/pis/PC09SLDR.html. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(e).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 more t period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to antiservice under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive authorized by the President or the Secretary of a national of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President of the Declared Land Reserve (A emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be under the visiting in the unit they support. This members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TAD. includes Navy TARs, Marine Corps ARs and Coast Guard RPAs, Active Duty status also applies to a Uniformed Service Service Service Dublic Health Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Corps I Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 20 period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided. Report ID:6B7C2ACVV6

CIV-OF-E) (Revenue, Separation, Service

www.Westiary Status

Department of Defense Manpower Data Center

Jul-05-2011 07:17:01



Military Status Report Pursuant to the Service Members Civil Relief Act

≺ Last Name		Begin Date	Active Duty Status	Active Duty End Date	Service Agency
MARTINEZ	EVELYN	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary Mr. Snavely-Dison

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL http://www.defenselink.mil/faq/pis/PC09SLDR.html. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive. period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active considerable. service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days. of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned analysis. members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs. Marine Community of the control of t includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member when the Public Health Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Occasional Corps) for the National Occasional Corps. Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 accessed. period of more than 30 consecutive days.

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided. Report ID:19JI5U7C7C

EXHIBIT 5

Civil	Court of	the City	of New	Vas.
Coun	ty of Bro	nx		COLK

2246 Webster Avenue, HDFC Plaintiff(s)

-against-

Ernesto Nunez; Evelyn Martinez

Defendant(s)

Index No: CV-033659-11/BX

Judgment Rejection Notification

The judgment which was submitted for the above captioned case has been rejected by the clerk for the following reason(s) listed below:

move to amend pleadings to reflect facts constituting claim.



When you resubmit your judgment application, please attach this sheet or a copy to your submission. This will allow the clerk to process your re-submittal in a timely fashion.

July 22, 2011

Thank you, The Judgment Clerk

EXHIBIT 6

		13816		
Civil Co County of	urr of the City Part	of New York	Index Number	46395/05
224 Ny	le Webri against Ne 2 Cr	Petitioner(s) Petitioner(s) Respondent(s) Landing Jent Undertenant(s)	JUDGMI Ir Upon Responde On St	ECISION AND ENT OF POSSESSION of Favor of Petitioner ont's Failure to Appear for Trial, or ipulation, or After Trial
		DECISION AND	JUDGMENT	
Respondent(s)	nas/have answered	, the case was placed o	n the calendar, and	the Respondent(s):
☐ failed	to appear for trial	on	. .	_·
√a tipula	ted (in writing) (o	n the record) that the p	oceeding is settled	, ,
⁽ □ appear	ed before me for t	rial on	<u></u>	.•
The Court deter				of \$ for the
period fr	om		, for a total	now due of \$
A Counterclaim		d the Court determines		
□ the an	2012NT ROSE TUE to t	he Respondent(s) is the	sum of \$	
🗆 such (Counterclaim is dis	missed (on the merits)(without prejudice).	
The Clerk is her	eby directed to:			
ENTER	A JUDGMENT C	F POSSESSION in fav	or of the Pctitioner((s) and against the Respondent(s), (and)
				ount of \$ <u>3,449,87,</u> together
with cos	is and disburseme	nts in the amount of \$ _		_, for a total of <u>3, 449.87</u>
Issuance of War	rant(forthwith)((VP). Ex	ecution stayed to a	
9/8 Date	105	` /	- Asing St	due Divivitausing Court
Таре#	Digital Co	unt	, or Court Repo	orter
		ENTRY OF	JUDGMENT	
Judgment en	tered in accordanc	e with the above on		
		, ,	4	- C C C C C C C C C C C C C C C C C C C
Warrant issu	ed to Marshal	wentom	on	hief Clerk, Civil Court OCT 24 2005

Page 33

	6-3-2
Civil Court of the City of New York	ndex Number (6395/=5
County of Dicas	mex roman
Part Part Date 9 8 65	ion c
Plaintiff(s)/Petitioner(s), against ENCST Numb Active	STIPULATION OF SETTLEMENT The parties understand that each party has he right to a trial, the right to see a Judge at any ime and the right not to enter into a stipulation of ettlement. However, after a review of all the issues, he parties agree that they do not want to go to trial and instead agree to the following stipulation in ettlement of the issues in this matter:
2. Respondent acknowledges owing \$3445.	as all rent due through < / > . /c s
3. Final judgment in favor of Petitioner for \$	3445.81 (1200 To Due
4. Townshire of warrant stayed on condition Hespe	ondent pays 48 follows:
a) 3449.81 bn or before 10	10/05
b) on or before	
c) on or before	
5. Respondent to additionally pay rent for Oc.	that as it becomes due. All payments
received shall be applied to current rent fir	st.
6. In the event of default on any payment, the	full amount shall become due and payable
immediately.	
7. Petitioner may accept partial payments without	ot prejudice.
4. MA 2314.05 7/19/15 SAP/	The stes agles Par mines a
Prymats 3449.81	
	2/
ACINS, SIEGEL & REXHER, LL? Attorneys for Partisonal	
	Eulys moderne
CIV 27-30 (Revised September, 1997)	Page 34

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34	INDEX NO. 33659/11 FILE NO. 14285	
2246 WEBSTER AVENUE, HDFC,		
Plaintiff,	AFFIRMATION OF SERVICE	
- against -		
ERNESTO NUNEZ, EVELYN MARTINEZ,		
Defendant.		
Gary M. Kavulich, Esq., an attorney duly admitted		

Courts of the State of New York hereby affirms the following under the penalty of perjury.

On October 5, 2011 I served the within Notice of Motion upon Ernesto Nunez and Evelyn Martinez, the Defendant in this action, by depositing a true copy in a post-paid envelope addressed to:

Ernesto Nunez 550 Audubon Avenue, Apt. 56 New York, NY 10040

Evelyn Martinez 707 N. 6th Street, Apt. 2F Allentown, PA 18102

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail.

Gary M. Kavulich, Esq.

INDEX NO: 33659/11

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF BRONX: PART 34

2246 WEBSTER AVENUE, HDFC,

Plaintiff,

- against -

ERNESTO NUNEZ, EVELYN MARTINEZ,

Defendant.

NOTICE OF MOTION TO AMEND THE SUMMONS AND COMPLAINT

Signature Rule 130-1.1-a

Print Name Beneath

Gary M. Kavulich, Esq.

Kavulich & Associates, P.C. Attorney for Plaintiff 181 Westchester Ave., Suite 500-C Port Chester, NY 10573 (914)355-2074

Case 1:16-cv-01627-CBA-RLM Document 55	5-8 Filed 01/29/18 Page 37 of 138 PageID #:
Civil Court of the City of New York	Index Number 33659/11
County of DRONX	Motion Cal. # Motion Seq. #
Part 34	DECISION/ORDER
2246 Webster-Avenue	Recutation, as required by CPLR \$2219 (a), of the gapers
HOFC	considered in the review of this Motion
Claiman Amhainm a marta	Papers Numbered
Claimant(s)/Plaintiff(s)/Petitioner(s)	Notice of Motion and Affidavits Annexed
ERNESTO NUNEZ	Order to Show Cause and Afficavits Annexed vil Court Answering Affidavits
Evelyn Hartinez	Replying AffidavitsCity of New York
Defendant(s)/Respondent(s)	Other DCT-1 8 2011
	The second of th
4 Complaint nunc-pa	
	is granted on default
THE Complaint is he	eveby amended to
Reflect #3,302 & wi	Th interest from May 1,
\$2005.	• • • • • • • • • • • • • • • • • • • •
Plaintiff shall file +.	sleve upon Defendant
a copy of this decision	on/orener notice of
its entry + the ame	ended summons of
complaint within 30	odaus of this
decision by Mail, co	2Rtyled Return Receipt
RODILESTED.	
•	
This constitutes the dec	1810m/order of 4hs
COURT	10.201
10/10/11	He Cities BEND BARRATO
Ligite ?	Sudge, Civil Court BEN R. BARBATO SUDGE, CIVIL COURT
	1
	Page 37

CIV-CP-95 (Kirchet, September, 1999)

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 38 of 138 PageID #: 1661

2246 WEBSTER AVENUE HDFC,	
Plaintiff, -against-	INDEX NO. 33639 (II FILE NO. 14285 NOTICE OF ENTRY
ERNESTO NUNEZ, EVELYN MARTINEZ,	
Defendant(s).	
PLEASE TAKE NOTICE, that annexed hereto Entered in the office of the Clerk of the Court on the 18 the Amended Summons and Complaint.	·

Dated: Westchester, NY October 20, 2011

Yours, etc.,

Kavulich & Associates, PC 181 Westchester Avenue, Suite 500C Port Chester, NY 10573

To: Ernesto Nunez 550 Audubon Avenue, Apt. 56 New York, NY 10040

> Evelyn Martinez 707 N. 6th Street, Apt. 2F Allentown, PA 18102

> > FILED, CIVIL COURT

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Civil Court of the City of New York	Index Number	A STATE OF THE STA
County of Part	Motion Cal. #	Motion Seq. #
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Claimant(s)/Plaintiff(s)/Petitioner(s) against	Papers Notice of Motion and Affidavit Order to Show Cause and Affidavits Answering Affidavits	avits Anne Crivil Court of the
EVELUM 14 ARTHURE Defendant(s)/Respondent(s)	Replying Affidavits Exhibits	OCT I 8 2011 ENTERED
Upon the foregoing cited papers, the Decision/O	rder on this Motion to	BRONX COUNTY
<u> 4 Complaint qunctori</u>	5-1-1	is as follows:
<u> Martiffs motion</u>	salat kalabura salaba a ta susak katalahan 1. Suburu 1	
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Case 1 16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 39 of 138 PageID #:

CIVIL COURT OF THE CITY OF NEW 'COUNTY OF BRONX	Index No. 184 5 1 3 1
2246 WEBSTER AVENUE HDFC,	
Plaintiff,	AMENDED SUMMONS
-against-	Place of Venue is designated
ERNESTO NUNEZ, EVELYN MARTINE	
Defendants.	2246 Webster Avenue Bronx, NY 10457
To the above named Defendant(s):	
NEW YORK, COUNTY OF BRONX at to Grand Concourse, Bronx, NY 10451 to an notice of appearance on the Plaintiff's attended in this summons is not personally delivered case of your failure to appear or answer, it	pear in the CIVIL COURT OF THE CITY OF the office of the Clerk of the said Court at 851 swer the complaint in this action and to serve a this not served with the summons, to serve a tris not served with the summons, to serve a tris not served with the service of this or within (20) days after the service in complete d to you within the State of New York; and in udgment will be taken against you for the sum m May 1, 2005 together with costs and
Dated: October 5, 2011	By: Gary M. Kavuhch; Esq. Attorney for Plaintiff Kavulich & Associates, P.C. 181 Westchester Avenue, Suite 500C Port Chester, NY 10573 (914) 355-2074
Defendants' Address:	Ç - , , ,
Ernesto Nunez	Evelyn Martinez
550 Audubon Avenue, Apt. 56 New York, NY 10040	707 N. 6 th Street, Apt. 2F Allentown, PA 18102
Note: The law provides that: (a) If the sum- within the City of New York, you must app	mons is served by its delivery to you personally car and answer within TWENTY days after such

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

Page 40

AMENDED COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from Defendanst for breach of a lease agreement in the sum of \$2,802.11 representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages form Defendants for breach of the lease agreement in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other and further relief as the court may deem just.

WHEREFORE: Plaintiff demands judgment (A) on the First Action in the sum of \$2,802.11 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just; (B) on the Second Action in the sum of \$500.00, together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

TO THE RESIDENCE OF THE PROPERTY OF THE PROPER

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 42 of 138 PageID #: CIVIL COURT OF THE CITY OF NEW YORK Index No. 33659/11 COUNTY OF BRONX File No. 14285 2246 WEBSTER AVENUE HDFC, AFFIDAVIT OF SERVICE Plaintiff, BY MAIL -against-ERNESTO NUNEZ, EVELYN MARTINEZ, Defendant(s) STATE OF NEW YORK COUNTY OF WESTCHESTER ss: Denise Miranda being duly sworn, deposes and says: I am over 18 years of age and not a party to this action. On October 20, 2011 I served the within Notice of Entry on the defendant in this action, by depositing a true copy of the Notice of Entry in a postpaid envelope addressed to: Ernesto Nunez 550 Audubon Avenue, Apt. 56 New York, NY 10040 in an official depository under the exclusive care and custody of the United States Postal Service. within the State of New York via Certified mail no. 91 7108 2133 3938 6989 8509/return receipt requested. Denise Miranda

Notary Publi

Sworn to before this 20th date of

GARY KAVULICH NOTARY PUBLIC-STATE OF NEW YORK NO: 02KA6205615 QUALIFIED IN WESTCHESTER COUNTY MY COMMISSION EXPIRES 5/11/2013

October, 2011

CIVIL COURT OF THE CITY COUNTY OF BRONX		Index No. 33659/11 File No. 14285
2246 WEBSTER AVENUE HI	>FC,	
	Plaintiff,	AFFIDAVIT OF SERVICE BY MAIL
-against-		
ERNESTO NUNEZ, EVELYN MARTINEZ,		
	Defendant(s)	
STATE OF NEW YORK COUNTY OF WESTCHESTE	iR ss:	
Denise Miranda being duly swe	orn, deposes and says:	
1 am over 18 years of age and n	oot a party to this action. On O	ctober 20, 2011
I served the within Notice of Er	stry on the defendant in this ac	tion, by depositing
a true copy of the Notice of Ent	try in a postpaid envelope addre	essed to:
707 N	n Martinez 7. 6 th Street, Apt. 2F town, PA 18102	
in an official depository under t	the exclusive care and custody o	of the United States Postal Service,
		33 3938 6989 8493, return receipt
requested, Sworn to before 200	Denise Mira)_ '/
this 20th day of Detober, 2011		

GARY KAVULICH NOTARY PUBLIC-STATE OF NEW YORK NO: 02KA6205615 OHAL HEED IN WEST CHESTEN COLD TO

Notary Public

QUALIFIED IN WESTCHESTER COUNTY MY COMMISSION EXPIRES 5/11/2013

-NOTICE OF ENTRY-

PLEASE take notice that the within is a doly entered in the office of the clerk of the within named court on (certified) true copy of a

Dated,

Atterney for

Office and Post Office Address

<u>-</u>0

Attorneys(s) for

WOTICE OF SETTLEMENT PLEASE take notice that an order of which the within is a true copy will be presented one of the judges of the within named Court at for sculement to the Hon.

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Dated,

Yours, etc.

Office and Post Office Address

Attorney for

To Attamey(s) for

INDEX NO. 33659

YEAR 2011

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 WEBSTER AVENUE HDFC,

Plaintiff, -against-

EVELYN MARTINEZ ERNESTO NUMEZ,

Defermant(s)

è NOTICE OF EX Gary Kavujich, Esq. Signature (Rule 139

Kavulich & Associates, P.C. Attorney for Plaintiff

Office and Post Office Address, Telephone 181 Westchester Avenue, Suite 500C

Port Chester, NY 10573

914-355-2074

Attorney(s) for

Service of a copy of the within is hereby admitted. Dated

Attorneys(s) for

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 45 of 138 PageID #: 1668

Bronx County Civil Court Civil Judgment

Index Number: CV-033659-11/BX Plaintiff(s): 2246 Webster Avenue, HDFC Judgment issued: On Default On Motion of: VS. Kavulich & Associates PC Defendant(s): 181 Westchester Avenue, Suite 500C, Port Ernesto Nunez: Chester, NY 10573-**Evelyn Martinez** \$45.00 Amount claimed Transcript Fee \$2,802.11 Index Number Fee \$0.00 Less Payments made \$0.00 County Clerk Fee \$0.00 Consumer Credit Fee \$0.00 Less Countorclaim Offset \$0.00 \$25,00 Enforcement Fee Service Fee \$40.00 Interest 11/01/2005 at 9% \$0.00 \$1,563.58 Non-Military Fee Other Disbursaments \$0.00 Attorney Fees 00.02 Other Costs \$0.00 Notice of Trial Fee \$0.00 Cost By Statute \$20.00 Jury Demand Fee \$0.00 **Total Damages** \$4,365.69 Total Costs & Disbursements \$130.00 Judgment Total \$4,495.69

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC

2246 Webster AVenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Emesto Nunez

550 Audubon Avenue, Apt. 56, New York, NY 10040-

(2) Evelyn Martinez

707 N. 6th Street, Apt. 2F, Allentown, PA 18102-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3

Carol Ait, Chief Clerk Civil Court

and alt

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX 2246 Webster Avenue, HDPC. PLAINTIFF(S) PLAIN	Case 1:16-cv-01627-CBA-RLM	Document 55-8 Filed 01/29/18 Page 46 of 138 PageID #:
INDEX NO. 33659/11 PLAINTIFF(S) PLAINTIFF(S) PLE NO. 14285.0 JUDGMENT -AGAINST- ETTESSIO NUREZ, Evelyn Martinez 2246 Webster Avenue Bronx. NY 10457 DEFENDANT(S) AMOUNT CLAIMED LESS PMTS ON ACCT. ISLAND STATEST FROM 1/1/2005 COSTS BY STATUTE SERVICE OF SUMMONS AND COMPLAINT SERVICE OF ROUGEST SO.00 NOTICE OF INQUEST SO.00 STATE OF NEW YORK, COUNTY OF WESTCHESTER THE UNDERSIGNED, A TYORNEY AT LAW OF THE STATE OF NEW YORK, ON OF THE ATTORNEY(S) OF RECORD FOR THE PLAINTIFF(S) IN THE ABOVE ENTITLED ACTION. STATES THAT THE DISSURSEMENTS ABOVE SPECIFIED HAVE BEEN ON WILL MOST SARILY BE MADE OR INCURRED THEREIN AND ARE REASONABLE IN AMOUNT: UPON FAILURE TO ANY OF THE DEFENDANT TO APPEAR AND ANSWER HEREIN HAS EXPIRED AND THE SAID DEFENDANT HAVE APPEARED AND ANSWER HEREIN HAS EXPIRED AND THE SAID DEFENDANT HAVE APPEARED AND AND HAVE REPROBLEMENT THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSIDEST A PREPARED AND AND HAVE THE SOLD HEREIN THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSIDEST A PREPARED AND AND HAVE THE SOLD HEREIN THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSTORM A PREPARED AND AND HAVE THE SOLD HEREIN THE STATUTE OF LIMITATIONS HAS NOT EXPIRED. THE UNDERSTORM A PREPARED AND AND HAVE THE PENALLIES OF PERIOR. BY GARY KAVULICH, ESQ. BY GARY KAVULICH, ESQ. BY GARY KAVULICH, ESQ. BY FILING ON SAID DAY OF PROOF OF THE SERVICE THEREOF BY SUBSTITUTED SERVICE ON DEFENDANTS) AND MORE THAN 30 DAYS HAVING ELAPSED SINCE THE DAY OF COMPLETION OF SERVICE ON DEFENDANTS) NOW ON MOTION OF KAVULICH & ASSOCIATES, P.C. ATTORNEY(S) FOR THE PLAINTIFF(S) IT IS. ADJUDGED THAT THE SUM OF \$2,802.11 WITH INTEREST OF 41159A MAINTING A TOTAL OF \$4315,75 OGETHER WITH S130.00 COSTS AND THE SUM OF \$2,802.11 WITH INTEREST OF 41159A MAINTING A TOTAL OF \$4315,75 OGETHER WITH S130.00 COSTS AND THE SUM OF \$2,802.11 WITH INTEREST OF 41159A MAINEY A TOTAL OF \$4315,75 OGETHER WITH S130.00 COSTS AND THE SUM OF		
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CLERK		CLERK

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 47 of 138 PageID #: 1670

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC.

PLAINTIFF(S)

AGAINST

AFFIDAVIT OF FACTS CONSTITUTING THE CLAIM THE DEFAULT AND THE AMOUNT DUE

Ernesto Nunez, Evelyn Martinez

DEFENDANT(S)

STATE OF NEW YORK COUNTY OF WESTCHESTER

SS: GARY KAVULICH, ESQ. HEREBY DEPOSES AND SAYS UNDER THE PENALTIES OF PURJURY, THAT DEPONENT IS THE ATTORNEY FOR THE PLAINTIFF(S) IN THE WITHIN ACTION; THIS ACTION WAS COMMENCED BY SUBSTITUED SERVICE OF THE SUMMONS AND COMPLAINT UPON DEFENDANT(S) AND IS AN ACTION FOR RENT DUE AND OWING FOR (AFTER APPLICATION OF PAYMENT AND SECURITY DEPOSIT)

November, 2005 balance of \$468.31

December, 2005 \$583,45

January, 2006 \$583.45

February, 2006 \$583,45

March, 2006 \$583.45

AT THE AGREED MONTHLY RENTAL OF \$583.45

ALL OTHER CAUSES OF ACTION ARE HEREBY WAIVED AND DISPOSED. AFTER A COMPLETE AND THOROUGH INVESTIGATION THE DEFENDANT IS FOUND NOT TO BE IN THE MILITARY AND RESIDES WITHIN THE CITY OF NEW YORK. RENT WAS NOT PAID BY ANY OTHER SOURCE. I MAKE THIS AFFIRMATION UPON INFORMATION AND BELIEF, A BELIEF PREDICATED UPON CONVERSATIONS WITH MY CLIENT, MY INVOLVEMENT IN THE PROCEEDING AND READING THE FILE IN THIS CASE.

SECOND AND THIRD CAUSES OF ACTION ARE HEREBY WAIVED. THE CAUSE OF ACTION IN THE WITHIN MATTER ACCRUED IN THE STATE OF NEW YORK WHERE THE STATUTE OF LIMITATIONS ON A CONTRACT, UPON WHICH THE ACTION IS BASED, IS SIX(6) YEARS. THE STATUTE OF LIMITATIONS HAS NOT EXPRESS.

WHEREFORE DEPONENT DEMANDS JUDGMENT AGAINST DEFENDANCIES FOR \$2,802 LWITH INTEREST FROM 1171/2005 TOGETHER WITH COSTS AND DISBURSEMENTS OF THE ACTION

KAVULICHA ASSOCIATES, P.C. BY: GARY KAVULICH, ESQ. 181 WESTCHESTER AVENUE, SUITE 500C PORT CHESTER, NY 10573

TO THE DEFENDANT(S): PLEASE TAKE NOTICE THAT THE WITHIN IS A TRUE COPY OF A JUDGMENT MADE AND ENTERED IN THE WITHIN ENTITLED ACTION AND DULY FILED IN THE OFFICE OF THE CLERK OF THE COUNT ON

DATED: WESTCHESTER, NY

11/21/2011

YOURS, ETC.,

ATTORNEYS FOR PLAINTIFF

STATE OF NEW YORK, COUNTY OF SS: BEING DULY SWORN, DEPOSES AND SAYS; THAT DEPONENT IS NOT A PARTY TO THE ACTION, IS OVER 18 YEARS OF AGE AND RESIDES IN

THAT ON DEPONENT SERVED A TRUE COPY OF THE WITHIN JUDGMENT AND NOTICE OF ENTRY THEREOF (EACH OF) THE FOLLOWING NAMED DEFENDANT(S) AT THE ADDRESS(ES) INDICATED (FOR EACH):

BY DEPOSITING SAME ENCLOSED IN POSTPAID PROPERLY ADDRESSED WRAPPER(S), IN -A POST OFFICE-OFFICIAL DEPOSITORY UNDER THE EXCLUSIVE CARE AND CUSTODY OF THE UNITED STATES POSTAL SERVICE WITHIN NEW YORK STATE.

SWORN TO BEFORE ME ON

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX	(NDEX NO. 33659/11		
2246 Webster Avenue, HDFC,			
PLAINTIFF(S)	AFFIRMATION OF		
-AGAINST-	MAILING OF ADDITIONAL NOTICE OF SUIT		
Ernesto Nunez, Evelyn Martinez			
DEFENDANT(S)			
GARY KAVULICH, ESQ., HEREBY AFFIRMS TH	E FOLLOWING UNDER THE PENALTY OF PERJURY.		
1. I AM THE ATTORNEY FOR THE PLAINTIFF(S) HERE	in.		
2. THE ABOVE ENTITLED ACTION IS AGAINST A NATUPON NON PAYMENT OF A CONTRACTUAL OBLIGATION.			
THE ENVELOPE(S) IN AN OFFICIAL DEPOSITORY UND SERVICE WITHIN NEW YORK STATE. SAID MAILING ADDRESSED TO THE DEFENDANT(S), THE ENVELOPE	INDICATION ON THE OUTSIDE OF THE ENVELOPE(S) THAT THE		
LAST KNOWN ADDRESS AT: Ernesto Nunez, Evelyn Martinez: 707 N. 6th St	550 Audubon Avenue Apt. 56 New York, NY 10040-3365 reet Apt. 2F Alfentown, PA 18102-1607		
PLACE OF EMPLOYMENT AT:			
THE ENVELOPE BORE THE LEGEND "PERSONAL & CO WAS NO INDICATION ON THE OUTSIDE OF THE ENVE COMMUNICATION WAS FROM AN ATTORNEY OR CO!	LOPE THAT THE		
A KNOWN ADDRESS OF THE DEFENDANT AT:			
THIS ADDRESS IS NOT THE RESIDENCE OR PLACE OF	EMPLOYMENT OF THE DEFENDANT.		
THE AFOREMENTIONED MAILING:			
HARNOT BEEN RETURNED UNDELIVERABLE BY	POSTAL SERVICE.		
WAS RETURNED UNDELIVERABLE BY POSTAL S	ERVICE AND WAS BE-SELVE TO THE DEFENDANT AT:		
	GARY KAVULICH, ESQ.		

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		16
2246 Webster Avenue, HDFC.		-A
		Index No. 33659/11
		File No. 14285.0
	Plaintiff,	
-against-		AFFIDAVIT OF
Evelyn Martinez Fransko A 1227 Defend	นคระ lant(s).	<u>INVESTIGATOR</u>
STATE OF NEW YORK)	
COUNTY OF WESTCHESTER)SS.:12	27
I am over 18 years of age, am not State of New York.	a party to this act	ion and reside in Westchester County,
I have been requested by Kayulich	& Associates, P.	C. attorney for the Plaintiff, to make

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF BRONX

On November 21, 2011, I Denise Miranda, contacted the Defense manpower Date Center concerning the Defendant Evelyn Martinez military status.

an investigation to ascertain if the Defendant(s) Evelyn Martinez is at the present

time in military service for the purpose of entry of judgment.

I inputted the Defendant's name and social security number, as provided by the Defendant him/herself, into the Defense Manpower Data Center.

Under the Defendant's social security number I received an affidavit from the Defense Manpower Data Center stating that the said Defendant is not currently in the military service of the United States and the State of New York (National Guard).

Dendse Miranda

Sworn to before

Notary Public _J

GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6205615
OUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/H/2013

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 50 of 138 PageID #: 1673

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GARY KAVULICH
NOTARY PUBLIC-STATE OF NEW YORK
NO:02KA6205615
QUALIFIED IN WESTCHESTER COUNTY
MY COMMISSION EXPIRES 05/11/2013

TARA GERMUNZ

hereby deposes and says under the penalties of perjury, ss:

That deponent is the managing agent of 2246 Webster Avenue, HDFC, Plaintiff in the within action; this action was commenced by substituted service of the summons and complaint upon defendant(s) and is an action for breach of a lease agreement in the amount of \$0.800.11 for the months flow, 2005 balance of \$468.31; Occ. 2005 through and including March, 2006 at the agreed monthly rental amount of \$583.45 per month (after application of security and after application of payments) no part having been paid, although duly demanded and Damages in the amount of \$735.00. All other causes of action are hereby waived and disposed of. After a complete and thorough investigation, as I have been informed by Plaintiff's counsel, the defendant(s) is/are found not to be in the military

Rent was not paid by any other source. I make this affirmation upon personal Knowledge.

WHEREFORE, Plaintiff demands judgment against defendant for \$ 7802.11 with interest from Nov. 1, 2005 together with costs and disbursements of the action.

Dated: 3/29/2011

Sworn to before me on this day of New 2011

Notary Public

TARA GREKULAK

Hotery Public, State of Non-Qualified in Westchester Toggi Commission Expires (2) Department of Defense Manpower Data Center

Nov-21-2011 10:59:45



Military Status Report Pursuant to the Service Members Civil Relief Act

≺ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
NUNEZ		Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard).

Mary Mr. Snavely-Dixon

Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Service Members Civil Relief Act (50 USC App. §§ 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenselink.mil" URL http://www.defenselink.mil/faq/pis/PC09SLDR.html. If you have evidence the person is on active duty and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. §521(c).

If you obtain additional information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects active duty status including date the individual was last on active duty, if it was within the preceding 367 days. For historical information, please contact the Service SCRA points-of-contact.

More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d)(1) for a period of more than 30 consecutive days. In the case of a member of the National Guard, includes service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy TARs, Marine Corps ARs and Coast Guard RPAs. Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps) for a period of more than 30 consecutive days.

Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate.

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of SCRA extend beyond the last dates of active duty.

Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided. Report ID:JN5Al7GMIV

Department of Defense Manpower Data Center

Nov-21-2011 11:00:50



Military Status Report Pursuant to the Service Members Civil Relief Act

≺ Last Name	First/Middle	Begin Date	Active Duty Status	Active Duty End Date	Service Agency
NUNEZ	1.,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	Based on the information you have furnished, the DMDC does not possess any information indicating the individual status.			

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Mary M. Snavely-Dixon, Director Department of Defense - Manpower Data Center 1600 Wilson Blvd., Suite 400 Arlington, VA 22209-2593

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Page 2 of 2

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Those who would rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected.

WARNING: This certificate was provided based on a name and SSN provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided. Report ID:2VAATCU0MM

Civil Court of the City of New York	Index Number 3365 Motion Cal. # N	
Country of Part 34		,—
2246 Webster Avenue	DECISION/6	DRDER 14285
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	Papers	Promisers#
Claimann(s)/Plaintiff(s)/Petitioner(s)	Nation of Marine and Affiliance American Order to Since Cause and Affiliania American	Cavil Count
LENESTO MUNICITA		of the y of New York
Substitute of the second of th	Explain	CT 1 8 2011
Defendant(s)/Respondent(s)		VIERED
Upon the foregoing cited papers, the Decision/C	Arder on this Motion to (14 V)	SALCONALLA DE LA COLAR
4 COMPANY WIND PR		is as follows:
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Civil Court of the City of New York Index Number County of ___ Motion Cal. # Part DECISION/ORDER WECSTER AV, HD Recitation, as required by CPLR §2219 (a), of the papers considered in the review of this Motion Civil Countered Claimant(s)/Plaintiff(s)/Petitioner(s) Notice of Motion and Affidavits Afinexed...... Of The againsi Order to Show Cause and Affidavas Annexed Y. D. Pierre Vinger EUNETLO WINE Replying Affidavits..... 門をたとよる Defendant(s)/Respondent(s) Upon the foregoing cited papers, the Decision/Order on this Motion to JACATE TUDGMENT PLAINTIFF! 12/65/10/186 くみり ユヤン HIHE NESIGING IN PENNSY! HAVE DOWNERTARY EDIDENCE THAT DEFENDANTS WERE NOT JACATES AND ALL FUNDS 0,2 Judge, Civil Court Date HON. RUBÉN FRANCO Page 57

CIV-GP-35 (Revised September)

Filed 01/29/18 Page 57 of 138 PageID #:

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 58 of 138 PageID #: Appearancel 684 Mandatory Civil Court of the City of New York Index Number: CV-033659-11/BX County of Bronx Part 39 2246 Webster Avenue, HDFC ORDER TO SHOW CAUSE ~against~ To restore case to the calendar, and vacate any Ernesto Nunez... et al. judgment, liens and income executions on this defendant on this Index number. allow proposed answer or dismissing the action UPON the annexed affidavit of Ernesto Nunez, sworn to on April 9, 2013, and upon all papers and proceedings herein: Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at: Bronx Civil Court 851 Grand Concourse Bronx, NY 10451 Part 34C Room 504 on APLIL 23 70/3 at 9:30 AM or as soon thereafter as counsel may be heard, why an order should not be made: VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just. PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed. SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the: Claimant(s)/Plaintiff(s) or named attorney(s); Sheriff or Marshal: (Judge igenitial) remember next daymant (Judge to Juitial) by Personal Service by "In Hand Delivery" by Personal Service by "In Hand Delivery" by Certified Mail, Return Receipt Requested by Certified Mail, Return Receipt Requested by First Class Mail with official Post Office by First Class Mail with official Post Office Lause, Morand Mushal Biegei, Stephen, Marshal Marshal Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615 Marshal Court Court (1) Civil Court Certificate of Mailing Certificate of Mailing shall be deemed good and sufficient on or before . PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause, Mail to Attorney: Kavulich & Associates PC (Counsel for Pltf), at 181 Westchester Avenue, Suite 500C. Port Chester, NY 10573 Jose A. Padilla, Civil Court Judge, Acting JSC (NYC) AG 5/17/13

5/7/11-11 OPP

15to ApH 515/1713

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Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 59 of 138 PageID #: 1682

ıl Co	ourt of the City of New York, County of Bronx	Index # CV-033659-11/BX
	Webster Avenue, HDFC -against- to Nunez et al.	Affidavit in support of an order to show cause to restore ease to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action
Erne (Dc.	New York, County of New York: esto Nunez, being duly sworn, deposes and says padant's initials) a) I am the Party named as (Defendant) (Respo	s:
	a) I have been served with a summons and country in the boundary first notice skip #3, #4, #5, and go to #6] a Notice of Default Judgment mailed to me a Restraining Notice on my bank account, a copy of an Income Execution served on Other:	nplaint in this action. [NOTE: if Small Claims skip #3, and go to #4] of legal action was [NOTE: if you complete any of #2b,
3	a) I did not appear and answer in the Clerk's O b) I did not appear and answer in the Clerk's Office and I received a date for trial, but the answer was entered late	ffice because: NOTE: if you complete # 3a, skip and go to #6 .
4.	a judgment was entered after the trial, a judgment was entered against me by defa Other:	
5.	appearing in court on the date scheduled for Other:	r trial is
6) (Je) 7.	a) I have not had a previous Order to Sh	De Maraball Closen Apt byfor in
8: <u>E</u>	because:	hat the case be restored to the calendar AND that the answer be deemed
Sworn to	before me this day April 9, 2013	
Signature o		(Sign Name) Ernesto Nunez 550 Audubon Avenue Apt. 56 New York, NY 10040

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 60 of 138 PageID #: 1683

	Court of the City of New York ty of Bronx	Index No: CV-033659-11/BX
	Webster Avenue, HDFC -against- sto Nunez et al.	PROPOSED ANSWER IN WRITING CONSUMER CREDIT PRACTICAL ACTION FOR MONEY ONLY
Defe as foll	endant, Ernesto Nunez, at 530 Andubur Avonne, Apt.	
	General Denial: I deny the allegations in the comple	
2	Tdid not receive a copy of the summons and comple	ıint
3	I received the Summons and Complaint, but service DEFENSES	
4	I do not owe this debt	
5	I did not incur this debt. I am the victim of identity I have paid all or part of the alleged debt.	theft or mistaken identity.
7	dispute the amount of the debt.	
8.	I do not have a business relationship with Plaintiff.	(Plaintiff lacks standing.)
9	The NYC Department of Consumer Affairs shows no rec	ord of plaintiff having a license to collect a debt.
10	Plaintiff does not allege a debt collection license nu	mber in the Complaint.
31	Statute of Limitations (the time has passed to sue on this debt: more than six years.)	
12	The debt has been discharged in bankruptcy.	
13	The collateral (property) was not sold at a commerc	-
14	Unjust enrichment (the amount demanded is excess	ive compared with the original debt.)
15	Violation of the duty of good faith and fair dealing.	
16	Unconscionability (the contract is unfair.)	
17	Laches (plaintiff has excessively delayed in bringing	g this lawsuit to my disadvantage.)
18	Defendant is in the military.	
19	Other:	THE
OTH		
20	Please take notice that my only source of income is	wages , which is exempt from collection.
COU	INTERCLAIM	_
21	Counterclaim(s):\$ Reason;	TOTAL BALBAL TOTAL
_		THE PROPERTY AND ASSESSMENT OF THE PROPERTY ASSESSMENT
C+	VERIFICAT	NON-
Ernes Const inform	of New York, County of Bronx ss: sto Nunez, being duly sworn, deposes and says: I am the Defen umer Credit Transaction and know the contents thereof to be tr nation and belief, and as to those matters I believe them to be to APR - 9 2003 a to before me this day of20	ue to my own knowledge except as to those matters stated or
	mobile Bec	Defendant

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 61 of 138 PageID #: Appearances Mandatory Civil Court of the City of New York Index Number: CV-033659-11/BX County of Bronx Part 39 2246 Webster Avenue, HDFC ORDER TO SHOW CAUSE -against-To restore case to the calendar, and vacate any Ernesto Nunez... et al. judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action UPON the annexed affidavit of the Martinez, swom to on April 9, 2013, and upon all papers and proceedings herein: Let the Claimant(s)/Plaintiff(s) or Claimant(s)/Plaintiff(s) attorney(s) show cause at: Bronx Civil Court 851 Grand Concourse Bronx, NY 10451 at 9:30 AM or as soon thereafter as counsel may be heard, why an order should not be made; VACATING the Judgment, and all income executions and restraining notices, if any, restoring the case to the calendar, deeming the proposed answer filed and/or dismissing the action if warranted, and/or granting such and further relief as may be just... PENDING the hearing of this Order to Show Cause and the entry of an Order thereon, let all proceedings on the part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of the City of New York for the enforcement of said Judgment be stayed. SERVICE of a copy of this Order to Show Cause, and annexed Affidavit, upon the: Claimant(s)/Plaintiff(s) or named attorney(s): Sheriff or Marshal: Indepotational) very treat day man (Judge to Initial) by Personal Service by "In Hand Delivery" 1. by Personal Service by\" In Hand Delivery" by Certified Mail, Return Receipt Requested by Certified Mail, Return Receipt Requested by First Class Mail with official Post Office _ by First Class Mail with difficial Post Office Certificate of Mailing Contificate of Mailing shall be deemed good and sufficient on or before _ PROOF OF SUCH SERVICE may be filed with the Clerk in the Part indicated above on the return date of this Order to Show Cause. egel, Stephan, Marshall West 38th Street ite 200 VYOK MY 10018 Mail to Attorney: Kavulich & Associates PC (Counsel for Pltf) , at 181 Westchester Avenue, Suite 500C. Port Chester, NY 10573 L. Padilla, Civil Court Judge, Acting

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 62 of 138 PageID #: 1685

	art of the City of New York, County of I	Bronx Index # CV-033659-11/BX
Webster Avenue, HDFC -against- rnesto Nunez et al.		Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action
<u>E</u>	of New York, County of New York: Evelyn Martinez, being duly sworn, deposes Defendant's initials) [4] I am the Party named as (Defendant)	and says:
	a) I have been served with a summons a b) I have not been served, and my first skip #3, #4, #5, and go to #6] a Notice of Default Judgment mails a Restraining Notice on pur bank as	and complaint in this action. [NOTE: if Small Claims skip #3, and go to #4] notice of legal action was [NOTE: if you complete any of #2h,
3	a) I did not appear and answer in the Clerk's b) I did not appear and answer in the Clerk's and I received a date for trial. but the answer was entered late Other:	Office
4.	On the Date of Trial before Judge/Arbitra a stipulation(a written agreement) w a judgment was entered after the tria a judgment was entered against me	as made between chimant/plaintiff and defendant. al. by default for my failure to appear.
5.	My reason for not complying with the stipulation is following the order of the Court is appearing in court on the date schedu	lled for mial is
5	a) I have not had a previous Order to because:	to Show Cause regarding this index number. Show Cause regarding this index number but I am making this application
9.		ated, that the case be restored to the calendar AND that the answer be deemed
	to before me this day April 9, 2013 **Complete Act Property of Court Employee and Title	(Sign Name) Luly mortung Evelyn Martinez 707 N. 6th Street Apt. 2F Allentown, PA 18102

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 63 of 138 PageID #: 1686

ourt of the City of New York aty of Bronx

	CV-033659-11,	
-11 11 1000 FRA 1940.		E I FIL

246 Webster Avenue, HDFC -against- Ernesto Nunez et al.	PROPOSED ANSWER IN WRITING	
named to the state of the state	ACTION FOR MONEY ONLY	
follows: 433 S. Frent St.	war-PA-1-81.02 answers the Complaint as	
Check all that apply)		
General Denial: I deny the allegations in the complaint		
SERVICE		
2 I did not receive a copy of the summons and complaint		
I received the Summons and Complaint, but service was no	t correct as required by law.	
DEFENSES		
4 \square I do not owe this debt		
5 I did not incur this debt. I am the victim of identity theft or i	mistaken identity.	
6 I have paid all or part of the alleged debt.		
7 I dispute the amount of the debt.		
	, , , , , , , , , , , , , , , , , , ,	
Plaintiff does not allege a debt collection license number in the Complaint. Statute of Limitations (the time has passed to sue on this debt: more than six years.)		
 The debt has been discharged in bankruptcy. The collateral (property) was not sold at a commercially rear 	sonable price	
Unjust enrichment (the amount demanded is excessive compared with the original debt.)		
Violation of the duty of good faith and fair dealing.		
16 Unconscionability (the contract is unfair.)		
17 Laches (plaintiff has excessively delayed in bringing this lav	vsuit to my disadvantage.)	
Defendant is in the military.		
19 Other:	THE PROPERTY OF THE PROPERTY O	
OTHER	- 0	
20 Please take notice that my only source of income is WW	,which is exempt from collection.	
COUNTERCLAIM	•	
21 Counterclaim(s):\$ Reason:		
VERIFICATION-		
State of New York, County of Bronx ss:		
Evelyn Martinez, being duly sworn, deposes and says: I am the Defendant in Consumer Credit Transaction and know the contents thereof to be true to my o		
information and belief, and as to those matter I believe them to be true	αΛ h	
•	- Evelyn matrines	
Sworn to before me this day of 20	Defendant	

COUNTY OF BRONX: PART 34		Index No. 33659/11
ㅡㅡㅜ;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;;	X	File No. 14285
2246 WEBSTER AVENUE	, HDFC,	
	Plaintiff,	AFFIRMATION IN OPPOSITION
- against -		
ERNESTO NUNEZ, EVELYN MARTINEZ,		
	Defendants.	
· · · · · · · · · · · · · · · · · · ·	X	

GARY KAVULICH, ESQ., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am a member of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendants Ernesto Nunez and Evelyn Martinez Orders to Show Cause which seek to restore case to the calendar and request that the judgment be vacated. Please see Defendants instant Order to Show Cause annexed hereto as Exhibit "1."

STATEMENT OF THE UNDISPUTED FACTS

3. On or about September 16, 2002, the Plaintiff entered into a one (1) year lease agreement and subsequent renewal lease agreements with the Defendants for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see a copy of the Plaintiff's agent, Janine Losey, annexed hereto as Exhibit "2." Annexed hereto as Exhibit "3" is a copy of the said lease agreement.

- 4. Thereafter, the Defendants breached said agreement by failing to pay rent.
- 5. Upon information and belief, on or about leave date Defendant, Plaintiff obtained legal possession of the subject-premises.
- 6. The Plaintiff thereafter commenced the instant proceeding against the Defendants for breach of a lease agreement by service of a summons and complaint on or about March 29, 2011. Please see a copy of said summons and complaint annexed hereto as Exhibit "4." Please see also a copy of the affidavit of service for the Defendants annexed hereto as Exhibit "5."
- 7. Thereafter, the Defendants failed to interpose an answer to said summons and complaint and the Plaintiff was then awarded a judgment in the sum of \$4,459.69. Please see a copy of the judgment annexed hereto as Exhibit "6."
- 8. Plaintiff then commenced execution measures pursuant to that judgment and on or about May 13, 2011, by serving an information subpoens with a restraining notice on the Defendants' current financial institution.
- 9. Pursuant to NY CPLR § 5222, §5222(h), §5222(i) or (ii), the bank responded that the funds were below the attachable limit of the protected amount set forth in 31 CFR Part 212 and so Plaintiff obtained no monies to apply to the aforementioned judgment. Please see a copy of said report annexed hereto as Exhibit "7."
- 10. However, it is your Affirmant's almost twenty years of experience that a bank will duly inform its account holders of any attempt to molest or disturb his or her assets changed to that bank's custody.
- 11. Plaintiff then commenced further execution measures on that judgment and on or about March 29, 2012, it issued a wage garnishment to New York City Marshal Stephen Biegel and he, in turn, served that income execution upon the Defendant Ernesto Nunez' current place of employment.

- 12. Pursuant to that income execution, the Plaintiff has received monthly payments since when totaling \$3,169.02 towards the satisfaction of the underlying judgment.
- 13. Thereafter, on April 9, 2013, more than a year Defendant Ernesto Nunez's started being garnished, the Defendants moved, via the instant Order to Show Cause, seeking to vacate the judgment with a return date for April 23, 2012, and adjourned for May 17, 2013. Please see aforementioned Exhibit "1."
 - Plaintiff now opposes Defendants' motions.

THE DEFENDANTS INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERITORIOUS DEFENSE, THEREFORE THE MOTION SHOULD BE DENIED

- 15. In order to meet the standard to allow this Court to vacate a judgment the Defendants are required to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action. CPLR 5051(a)(1).
- 16. Moreover, should the Defendants demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default when the Defendants' papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported legal conclusions. Thapt v. Lutheran Med. Ct., 89 AD3d 837 [2d Dep't 2011]; Garal Wholesalers, Ltd. v. Raven Brands, Inc., 82 AD3d 1041 [2d Dep't 2011].
- 17. The Defendants, in their affidavit in support, asserts as a reason for requesting a new trial is specifically that "I do not owe the debt, I did not receive the summons and complaint, unjust enrichment and laches." Please see the aforementioned Exhibit "1."
- 18. However, the Defendants do not provide adequate or accurate proof that they do not owe a debt to the Plaintiff. As a result, the Defendants explanation is only self-serving and unsubstantiated.

- 19. Defendant Ernesto Nunez' claim that he did not receive the summons and complaint is difficult to believe in light of Plaintiff's mailing of that Summons and Complaint. Please see the aforementioned Exhibit "5" also see a copy of the certified mail to the Defendant Ernesto Nunez that was returned by the Post Office marked "unclaimed" annexed hereto as Exhibit "8."
- 20. The certified mail was addressed to the address of the Defendant Ernesto Nunez as he stated in the Order to Show Cause. Please see aforementioned Exhibit "I." Please see aforementioned Exhibit "5." Please see aforementioned Exhibit "8."
 - 21. Thus, according to the Post Office, the Defendant maintained an address there.
- 22. The Defendant even denied to your Affirmant that he has any connection to that residence. Please see aforementioned Exhibit "5."
- 23. In light of the Post Office having him at that address it strains credulity that Defendant denies even a connection there. Please see aforementioned Exhibit "5."
- 24. It is respectfully stated that such a blatant disregard for an obvious fact should inform the Honorable Court of Defendant's truthfulness.
- 25. However, the Defendant Ernesto Nunez does not provide adequate or accurate proof that he did not receive a copy of the summons and complaint. As a result, the Defendant's reason is only self-serving and unsubstantiated.
- 26. As stated earlier, on or about September 16, 2002, the Plaintiff entered into a one (1) year lease agreement and subsequent renewal leases agreements with the Defendants for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see the aforementioned Exhibit "3."
- 27. As stated within upon information and belief, on or about February 19, 2005, the Defendants vacated the subject premises.

- 28. As a result, the Defendants are liable for the rent payments for the months of October, 2005 through and including March, 2006.
- 29. Moreover, the tenant ledger we currently posses clearly shows that the Defendants, at the time they vacated the subject-premises, had a balance of \$6,986.98. Annexed hereto as Exhibit "9" is a copy of the said tenant ledger.
- 30. Thus, this Court should find the Defendants reason not persuasive and thus not reasonable pursuant to CPLR 5051(a)(1).
- 31. Even if this Court finds the Defendants above excuses and reasons to constitute a reasonable default, the Defendants must additionally allege a meritorious defense in order for their motion to be successful.
 - 32. The Defendants fail to allege a meritorious defense.
- 33. Thus, the Defendants alleged defense has therefore failed to provide anything but mere conclusory statements.
- 34. Moreover, the Defendants alleged meritorious defense does not state any cognizable legal principle.
- 35. Thus, in accord with *Thapt* and *Garal*, this Court must uphold the herein judgment agreed to by both parties.
- 36. Conversely, the Plaintiff's claim has merit as the Defendants breached the parties' lease agreement by not paying rent pursuant to said lease. To date, the Defendants owe the Plaintiff the amount agreed to in the judgment in the amount of \$1,326.67(\$4,495.69-\$3,169.02 monies collected from the New York City Marshal's income execution) plus interest from May 1, 2005, costs, disbursements and fees. Please see the aforementioned Exhibit "6."

37. As the Defendants fail to set forth both an excusable default and a meritorious defense, and the Plaintiff continues to suffer from the unsatisfied debt, the Plaintiff respectfully requests this Court to deny the Defendants motion to vacate the judgment.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff respectfully asks that this Court deny the instant motion.

Dated: May 14, 2013 Port Chester, NY

> Kavulich & Associates, P.C. By: Gary Kavulich, Esq. Attorney for Plaintiff 181 Westchester, Ave., Suite 500C Port Chester, NY 1057

(914) 355-2074

EXHIBIT 1

County of Bronx Part 39	maex voimber CV-033659-11)BX
2246 Webster Avenue, HDFC	ORDER TO SHOW CAUSE
-against-	To restore case to the calendar, and vocate any
Ernesto Nunez et al.	judgment, liens and income executions on this
	defendant on this Index number,
	allow proposed answer or dismissing the action
UPON the annexed affidavit of Ernesto herein;	Nunez, sworn to on April 9, 2013, and upon all papers and proceedings
Let the Claimant(s)/Plaintiff(s) o	r Claimant(s)/Plaintiff(s) attorney(s) show cause at:
Bronx Civil Court 851 Grand Concourse	•
Bronx, NY 10451	(1/22/12
Part 34C Room 504	4447//3
	at 9:30 AM
on M2/L 23 30/3 or as soon thereafter as coursel m	nay be heard, why an order should not be made:
	e executions and restraining notices, if any, restoring the case to the
calendar, deeming the proposed answer fil	ed and/or dismissing the action if warranted, and/or granting such and
further relief as may be just.	
PENDING the hearing of this Order to Sh	ow Cause and the entry of an Order thereon, let all proceedings on the
part of the Claimant(s)/Plaintiff(s), Claima	nt(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of
the City of New York for the enforcement	
SERVICE of a copy of this Order to Show	Cause and anneved Affidavit upon the
Claimant(s)/Plaintiff(s) or panied attorney	· ·
(Judge to thicial) ner ment went claym	
by Personal Service by "In Hand	
by Certified Mail, Return Receip	
by First Class Mail with official Po	
Certificate of Mailing	Certificate of Mailing
11 / 1/2	
on or before 4/10/13	, shall be deemed good and sufficient
PROOF OF SUCH	SERVICE may be filed with the Clerk in the Part on the return date of this Order to Show Cause. Sheriff/Marshal:
	on the return date of this Order to Show Cause. 100 000 101 1
	Marie Marie Ol
Mail to Attorney:	Sheriff/Marshal:
Kavulich & Associates PC	NYC Marshal To might the
(Counsel for Pitf),	Biegel, Stephen, Marshal 109 W 38 Street
at 181 Westchester Avenue, Suite 500C,	Suite 200 Mother of Contra
Port Chester, NY-10573	New York, NY 10018-3615
and the state of t	0 10
	SERVICE may be filed with the Cierk in the Part on the return date of this Order to Show Cause. Sheriff/Marshal: NYC Marshal Biegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615
4 - 41 0 - 201 2	Sel-10-13 /10
April 9, 2013	
DATÉ	Hor Jese A. Padilla, Civil Court Judge, Acting JSC (NYC)

THE PROPERTY OF THE PROPERTY O	Brongs
2246 Webster Avenue, HDFC -against- Ernesto Nunez et al.	Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action
State of New York, County of New York: Ernesto Nunez, being duly sworn, deposes and (Refendant's initials) 1 Lab a) I am the Party named as (Defendant)()	rd says: Respondent) in the above titled action
b) I have been served with a summons at b) I have not been served, and my first n skip #3, #4, #5, and go to #6 a Notice of Default Judgment maile a Restraining Notice on my bank ac a copy of an income Execution serv Other:	nd complaint in this action. [NOTE: if Small Claims skip #3, and go to #4] notice of legal action was [NOTE: if you complete any of #2b.
b) I did not appear and answer in the Clerk's (and I received a date for trial, but the answer was entered late Other:	Office
a judgment was entered after the trial a judgment was entered against me b Other:	as made between claimant/plaintiff and defendant. L. Dy default for my failure to appear.
5. My reason for not complying with the stipulation is following the order of the Court is appearing in court on the date schedul Other:	led for trial is
7. a) I have not had a previous Order	to Show Cause regarding this index number. Show Cause regarding this index number but I am making this application
8. E I request that the Judgment be vaca timely filed.	ited, that the case be restored to the calendar AND that the answer be deemed
Sworn to before me this day April 9, 2013 The Object - Pro Signature of Court Employee and Title	(Sign Name) Ernesto Nunez 550 Audubon Avenue Apt. 56

Cou	mty of Bronz	BOOK NO. CV-033659-11/6X	
	6 Webster Avenue, HDFC -against- esto Nunez et al.	PROPOSED ANSWER IN WRITING	
		ACTION FOR MONEY ONLY	
Def as fol	fendant, Ernesto Nunez, at 550 Audubon Aveque, Apr. So New Hows: 933 5 Front St. Allent	Nork NY 19940 answers the Complaint もいっくりA - 18163	
CI	heck all that apply)		
1	General Denial: I deny the allegations in the complaint		
	SERVICE		
2	I did not receive a copy of the summons and complaint		
3	I received the Summons and Complaint, but service was not <u>DEFENSES</u>	correct as required by law.	
4	do not owe this debt		
5	I did not incur this debt. I am the victim of identity theft or m	ristaken identity.	
6	1 have paid all or part of the alteged debt.		
7	dispute the amount of the debt.		
8	I do not have a business relationship with Plaintiff. (Plaintif	f lacks standing.)	
9			
10	Plainliff does not allege a debt collection license number in the Complaint.		
11	Statute of Limitations (the time has passed to sue on this debt: more than six years.)		
12	The debt has been discharged in bankruptcy.		
13	The collateral (property) was not sold at a commercially reasonable price.		
14	Unjust enrichment (the amount demanded is excessive comp.	ared with the original debt.)	
15	Violation of the duty of good faith and fair dealing.		
16	Unconscionability (the contract is unfair.)		
17	Laches (plaintiff has excessively delayed in bringing this law	suit to my disadvantage.)	
18	Defendant is in the military.	·	
19	Other:	70.00	
ОТН	IER		
20	Please take notice that my only source of income is \square	5 , which is exempt from collection.	
COÜ	INTERCLAIM	, , , , , , , , , , , , , , , , , , , ,	
21	Counterclaim(s):\$ Reason:		
.	VERIFICATION-		
Ernes Consu inform	of New York, County of Bronx ss: sto Nunez, being duly sworn, deposes and says: I am the Defendant in thi umer Credit Transaction and know the contents thereof to be true to my o nation and belief, and as to those matters I believe them to be true	s proceeding. I have read the Answer in Writing wn knowledge except as to those matters stated on	
oworn	to before me this day of 20		
T	THE STREET STREET	Defendant	

	MANAGER TO THE PROPERTY OF THE
County of Bronx Part 39	
2246 Webster Avenue, HDFC	ORDER TO SHOW CAUSE
-against- Ernesto Nunez et al.	To restore case to the calendar, and vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action
UPON the annexed affidavit of Evelyn Martinez, swe herein:	orn to on April 9, 2013, and upon all papers and proceedings
Let the Claimant(s)/Plaintiff(s) or Claimant(s)	/Plaintiff(s) attorney(s) show cause at:
Bronx Civil Court	1. 600 1.00
851 Grand Concourse	4/23/13
Bronx, NY 10451 Part 34C Room 504	/ /
on BRIL 23,70/3 Room 504	at 9:30 AM
or as soon thereafter as counsel may be heard,	
VACATING the Judgment, and all income executions	and restraining notices, if any, restoring the case to the
calendar, deeming the proposed answer filed and/or dis	missing the action if warranted, and/or granting such and
further relief as may be just	
PENDING the hearing of this Order to Show Cause an	d the entry of an Order thereon, let all proceedings on the
part of the Claimant(s)/Plaintiff(s), Claimant(s)/Plaintif	f(s) attorney(s) and agent(s) and any Marshal or Sheriff of
the City of New York for the enforcement of said Judgm	nent be stayed.
SERVICE of a copy of this Order to Show Cause, and Claimant(s)/Plaintiff(s) or named attorney(s): Oudge to initial by Personal Service by "In Hand Delivery" by Certified Mail, Return Receipt Requested by First Class Mail with official Post Office Certificate of Mailing	Sheriff or Marshal: (Judge to Initial) A by Personal Service by "In Hand Delivery"
on or before, shall be de	eemed good and sufficient
PROOF OF SUCH SERVICE in indicated above on the return	ay be filed with the Clerk in the Part date of this Order to Show Cause.
Mail 19 Attorneys	Sheriff/Marshal:
Kayulich & Associates PC	Bing O Stephen, MAISTE
(Counsel for Pltf) , at 181 Westchester Avenue,	25th Street
Suite 500C,	Biegel Stephen, Marsh II 109 West 38th Street
Ports Chester AN 100 100	Swite JOD MY 10018
April 9, 2013	19 sul of
	Padilla, Civil Court Judge, Acting (SCANNE) Word Manual M

		орожительного в принципання в
2246 Erne	Webster Avenue, HDFC -against- sto Nunez et al.	Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number, allow proposed answer or dismissing the action
F.	of New York, County of New York: Yelyn Martinez, being duly swom, deposes and sefendant's initials) [4] I am the Party named as (Defendant)(Response)	ays: ondent) in the above titled action mplaint in this action. [NOTE: if Small Claims skip #3, and go to # 4]
2.	skip #3, #4, #5, and go to #6; a Notice of Default Judgment mailed to make a Restraining Notice on my bank account	te
3	a) I did not appear and answer in the Clerk's O b) I did not appear and answer in the Clerk's Office and I received a data for trial. but the answer was entered late	ffice because: NOTE: if you complete #3a, skip and go to #6].
4.	a judgment was entered after the trial. a judgment was entered against me by def	
5.	My reason for not complying with the stipulation is following the order of the Court is	or trial is
§ Æ 1	a) I have not had a previous Order to SI b) I have had a previous Order to Show because:	tow Cause regarding this index number. Cause regarding this index number but I am making this application
8.	I request that the Judgment be vacated, timely filed .	that the case be restored to the calendar AND that the answer be deemed
<u> </u>	o before me this day April 9, 2013 (1) As observed Acc of Churt Employee and Title	(Sign Name) Culty Mortung Evelyn Martinez 707 N. 6th Street Apt. 2F Allentown, PA 18102

County of Broux	Index No: CV-033659-11/BX
2246 Webster Avenue, HDFC	PROPOSED ANSWER IN
-against- Ernesto Nunez et al.	WRITING
Elicoto Mancelli, co del	ACTION FOR MONEY ONLY
Defendant, Evelyn Martinez, at 70 September 27, Allento follows: Check all that apply) General Denial: I deny the allegations in the complaint SERVICE I did not receive a copy of the summons and complaint I received the Summons and Complaint, but service was not DEFENSES I do not owe this debt I did not incur this debt. I am the victim of identity theft or a large of the alleged debt. I dispute the amount of the alleged debt. I do not have a business relationship with Plaintiff. (Plaintiff) The NYC Department of Consumer Affairs shows no record of plaintiff does not allege a debt collection license number in Statute of Limitations (the time has passed to sue on this details and the collateral (property) was not sold at a commercially read Unjust enrichment (the amount demanded is excessive complete.)	t correct as required by law. iff lacks standing.) aintiff having a license to collect a debt. the Complaint. ebt: more than six years.)
Violation of the duty of good faith and fair dealing.	
Unconscionability (the contract is unfair.)	
17 Laches (plaintiff has excessively delayed in bringing this lav	vsuit to my disadvantage.)
Defendant is in the military.	
OTHER	
20 Please take notice that my only source of income is \\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\	which is exempt from collection.
COUNTERCLAIM	
21 Counterclaim(s):\$ Reason:	VETALOVIETAIN.
	A STATE OF THE STA
VERIFICATION-	
State of New York, County of Broax ss: Evelyn Martinez, being duly sworn, deposes and says: I am the Defendant in Consumer Credit Transaction and know the contents thereof to be true to my information and belief, and as to those matter. I believe them to be true Sworn to before me this	this proceeding. I have read the Answer in Writing own knowledge except as to those matters stated on Defendant

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 78 of 138 PageID #: 1701

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 3C		INDEX NO. 33659/11 FILE NO. 14285	
2246 WEBSTER AVENUE,	HDFC,		
	Plaintiff,	AFFIDAVIT IN	
-against-		OPPOSITION	
ERNESTO NUNEZ, EVELYN MARTINEZ,	Defendants.		
STATE OF NEW YORK COUNTY OF BRONX)) SS)		
I, Janine Losey, bein	g duly swom deposes and say	s:	
1. That I am the manag	ing agent for the Plaintiff, 224	46 Webster Avenue, HDFC	
herein, and as such I	am fully familiar with the fac	ts and circumstances of this	
proceeding.			
2. The Plaintiff entered	l into a lease agreement with t	he Defendants, for a period of	
one (1) year from Se	eptember 16, 2002 through and	l including September 30, 2003	
for the premises kno	wn as 2246 Webster Avenue,	Apt. 3, Bronx, NY 10457.	
3. The Parties thereafte	er entered into a series of renev	wal lease agreements, with the	

latest renewal lease agreement ending on March, 2006.

4.

\$583.45.

Defendant then breached said renewal lease agreement and allowed a balance of

\$2,802.11to accumulate representing rental arrears for the months of October,

2005 through and including March, 2006 at the agreed upon monthly sum of

- On or about February 19, 2005, the Defendants' were evicted from the premises 5. known as 2246 Webster Avenue, Apt. 3, Bronx, New York 10458.
- The Plaintiff then brought this instant action seeking to recover arrears balance б. owed by Defendants' to Plaintiff.
- Thereafter, Defendants' failed to interpose an answer thereby defaulting on this 7. action.
- Accordingly, on January 12, 2012, a judgment was entered in the amount of 8. \$4,495.69,
- 9. On, or about March 29, 2012, Plaintiff then commenced Income Execution measure pursuant to that judgment on the defendant, Emesto Nunez current place of employment.
- 10. As of this date, Plaintiff has received \$3,169.02 towards the satisfaction of the said judgment.
- 11. Therefore, the remaining amount of \$2,802.11 remains due and outstanding.
- 12. My attorney has further advised me that the Defendant now seeks to vacate the judgment taken against them in this matter.

WHEREFORE, your deponent prays that the Court deny the instant motion as no

legal or equitable basis has been provided.

Janine Lose

Sworn to before me this

day of April, 2013

TARA J. GREKULAK

NOTARY PUBLIC STATE OF NEW YORK No. 01GRS198908

Qualitied in Westchester County My Commission Explicit February 92, 2017

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RENT STABILIZED LEASE ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS UNDER THE RENT STABILIZATION LAW. (LOS DERECHOS Y RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTÁN DISPONIBLE EN ESPAÑOL.)

Owner and Renter make this apartment	lease agreement as follows:
Owner's Name: 2246 WEBSTER AVEN	NUE HDFC
Owner's Address for Notices: 660 E. 183	ST. BX, NY 10458
Renter's Name: L. MR. ERNESTO NUNE	Z Social Security #: 3547
2	Social Security #:
Renter's Present Address: 877 BROOK AVE	
Address of Premises to Be Remed: 2246 WE	BSTER AVENUE, BRONX, NY 10457
Apt. No.: 3 Term of This Lease (Check one)	792.53 :Q1 year 0 2 years *Monthly Rent: \$695.96 PREFERRED RENT: \$525.00
Date of Lease: 09/16/0Z Beginning	g: 09/16/02 Ending: 09/30/03
* If a preferential tent is being charged, the amount of the	preferential rent is set forth in the attached rider.
1. HEADINGS: Paragraph headings are only for ready refere to the terms of this lease. 2. CONDITION "AS IS": Rentet acknowledges inspecting spartment prior to signing this lease and accepts the apartment the condition it is in as of such inspection. Renter acknowled that the apartment is free of defects. Owner warrants that apartment and building are fit for habitation and there are conditions dangerous to health, life or safety. 3. USE AND OCCUPANCY OF APARTMENT: The apartmis to be used and occupied for private residential purposes only the primary residence of Renter. The apartment may be occup only by Renter named in this lease, Renter's immediate family other occupants in accordance with the applicable provision law, Renter agrees that the apartment will be occupied only by following individuals, in addition to Renter: Name: Birth Date: Relation to Renter Ernesto Nunez	cancel this lease and obtain a refund of money deposited. Owner will notify Renter as of the date possession is available. The ending date of the lease term will not change in the event Owner is smable to give possession as of the beginning of the lease term. 5.RENT, ADDED RENT, RENT ADJUSTMENTS: a.Rent payments for each month are due on or before the first day of each month at the address obove or at a location designated by Owner in writing. Notice from Owner to Renter that rent is due is not required. The rent must be paid in full without deductions. The first month's rent and added rent must be paid when Renter signs this lease. b.Renter may be required to pay other charges and fees to Owner under the terms of this lease. They are called "added rent." This added rent will be payable as rent, together with the next monthly rent due. If Renter fails to pay the added rent on time, Owner shall have the same rights against Renter as if Renter failed to pay rent. c. If this apartment is subject to the rent stabilization laws, the rent to be natifications the terms of this
Evelyn Martinez 32 Spouse 02 Daughter	lease may be adjusted, prospectively or retroactively, pursuant to an order of the New York State Division of Housing and
Renter is obligated to advise Owner, in acting, if any addition occupant moves that the apartment. Such notice must be furnes by Renter to Owner within 10 days of the date such addition occupant moves into the apartment. The apartment may not occupied by more than the number of occupants permitted	be increased or decreased retroactively to the communication of the lease consistent with orders usued by the RGB. Added rent as defined berein shall include, but it not limited to:
§27-2075 of the Housing Maintenance Code or by §235-f of Real Property Law, whichever is less.	PREMISES
4.RENTER'S POSSESSION OF APARTMENT: Owner sit not be lighte for failure to give Renter possession of the apartm on the beginning day of the lease term. Rent shall be payable at the beginning of the term unless Owner is unable to g	6.FAILURE TO PAY RENT ON DUE BATE: Reat is due by the first day of each month. Payment after the 10th day of each month shall be considered a "late navonate." Benis

 $\textbf{\textit{wasse}} \\ \\ \text{\textit{wearest the restriction of th$

possession, in which case tent shall be payable as of the date

possession is available. Owner must give possession within 30

agrees and understands that three (3) or more late payments in

any twelve month period shall be deemed to be a failure to comply

se 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 82 of 138 PageID #:

if any, shall be used by messengers and trades people ing and leaving and the passenger elevators, if any, shall ged by them for any purpose.

UNDRY: Laundry machines if any, provided by Owner, be used by Renter in the manner and at the times that Owner designate. Renter shall not dry or air clothes on the roof or the terrace or balcony, if any. Renter may use laundry machines. any, at their own risk.

BLOBJECTIONABLE CONDUCT: Renter, their families. guests, employees, or visitors shall not engage in any conduct which makes the apartment or building less fit to live in for Renter or other occupants. Renter shall not make or permit any disturbing noises in the apartment or building or permit anything to be done that will interfere with the rights, comfort or convenience of other renters. Renter shall not play a musical instrument or operate of allow to be operated audio or video equipment so as to disturb or annoy any other occupant of the building.

43.NO PROJECTIONS: Renter may not install or cause to be installed anything on the roof or outside wall of the building or

any balcony, terrace, or window.

44 MOVING: Renter can use the elevator or service elevator, if any, to move furniture and possessions only on designated days and at designated hours. Owner shall not be liable for any costs, expenses or damages incurred by Renter in moving because of delays caused by unavailability of the elevator. Renter shall be liable for any damage caused to the building or the apartment

during such move.

45.WAIVER OF FOREIGN SOVEREIGN AND DIPLOMATIC IMMUNITY: Renter represents that he is not subject to foreign sovereign or diplomatic immunity. Renter expressly waives the doctrine of foreign sovereign immunity and diplomatic immunity and consents to the jurisdiction of the Housing Court and all other courts. Renter expressly represents that in the event a judgment is obtained against him, Owner may enforce the judgment against any property or assets of Renter, wherever they

46.MILITARY STATUS: Renter represents that he is not in the United States military, and is not dependent upon a member of the United States military. Renter must notify Owner within ten-

days of enlistment in the military.

47. PARTIES BOUND: This lease agreement is binding on Owner and Renter, and on all those who claim a right, or have a right, to succeed to the legal interest of Owner and Renter.

48.FORMS: Renter agrees to complete any and all forms that

may be requested by Owner from time to time.

19 SUBORDINATION: The rights of Renter, including all rights granted under the terms of this leave are, and shall be, subject to and subordinate to the terms of any mortgage on the building or the land under the building which now exists, or which may hereafter exist. The foregoing shall include but not be limited to any modification, consolidation or extension agreement of any existing mortgage on the land or building.

50.SINGULARUPLURAL and JOINT/SEVERAL: The use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires. If more than one entity is renting the apartment, their obligations shall be joint and several.

51. CONDEMNATION/EMINENT DOMAIN: If the building. or any part of the building, is taken or condemned by a public authority or government agency, this lease will end on the date of such taking. In such event, Renter will have no claim for damages against Owner based upon such taking, and Renter will be required to surrender the apartment to Owner upon 30 days written notice from Owner to Renter of such government taking.

52. CONSTRUCTION/CONVENIENCE: Neighboring buildings may be the subject of construction, renovation or demolition. Owner will not be liable to Renter, nor shall Renter seek to hold Owner liable for interference with views, light, air flow, or ventilation, the covenant of quiet enjoyment, or breach of the warranty of habitability whether such interference is temporary or permanent, if such interference results from activities conducted

on adjoining Owners' properties.

53.NO WAIVER: The failure of Owner to insist at any time upon strict performance of any clause in this lease shall not be construed as a waiver of Owner's rights. No waiver by Owner of any provision of this lease can be made unless made in writing by Owner. Acceptance of tent by Owner with knowledge of the breach of any condition or term of this lease is not a waiver of the breach. 54.CREDIT REPORTS: Renter authorizes Owner to use the Social Security number of Renter to obtain any and all credit reports for the purpose of the initial lease or any renewal thereof now and no more than five years after the expiration of this lease or any senewal discreof, and fully understands that these reports will be used by owner in connection with Renter's occupancy of the apartment.

55.ENTIRE AGREEMENT: Owner and Rentes have read this lease and agree that it contains the entire understanding of the parties regarding the rental of the subject epartment. The lease can only be changed in writing. The writing must be signed by

both Owner and Renter.

If any part of this lease is determined to be unlawful, the remaining provisions of the lease will remain valid and in full force and effect.

→ 2216 WEBSTER AVENUE HDFC	MR. ERNESTO NUNEZ
Owner/Agent (on behalf of Owner)	Renter
SIGNATURE	Regier
	Renter

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 84 of 138 PageID #: 1707

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC, Plaintiff.

INDEX NO. FILE NO. 138164 14285

-against-

SUMMONS
Place of Venue is Plaintiff's place of business:

Emesto Nunez, Evelyn Martinez,

2246 Webster Avenue Bronx, NY 10457

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum of 7,486,98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011

By: Gary Kavalich, Esq., Kavulich & Associates, P.C. Altorney for Plaintiff 181 Westchester Avenue Suite 500C Port Chester, NY 10573 (914) 355-2074

Defendant's Address:
Emesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez, 707 N. 6th Street Apt. 2F Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 87 of 138 PageID #:

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index No. 33659/11 Filed: _____

Attorneys: Kavulich & Associates, P.C.

Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 1381を 142と5

2246 WEBSTER AVENUE HDFC,

ernesto nunez, Evelyn Martinez,

State of New York County of Nassau SS:

Aston G. Evans II, being duly sworn deposes and says:

Deponent is not a party herein, is over 18 years of age. On May 13, 2011 at 7:23 p.m.

At, 707 N. 6th Street, Apt, 2F, Allentown, PA 18102-3365 served the within Summons and Complaint on: EVELYN MARTINEZ, Defendant therin named.

Individual By delivering a true copy of each to said recipient: deponent knew the person served to be the person described as said person therein.

Corporation By delivering to and leaving with and that deponent knew the person so served and authorized to accept service on behalf of the Corporation

Suitable Age By delivering a true copy of each to a person of suitable age and discretion

Person Said premises is recipients [] actual place of business [X] dwelling house within the

[X] state,

Affixing By affixing a true copy of each to the door of said premises, which is recipients to Door [] actual place of business [] dwelling house (place of abode) within the state

Mail Copy

On May 14, 2011 deponent completed service under the last two sections by depositing a copy of the Summons and Complaint to the above address in a 1*

Class properly addressed envelope marked "Personal and Confidential" in an official depository under the exclusive care and custody of the United States Post Office in the State of New York.

Deponent was unable, with due diligence to find the recipient or a person of suitable age and discretion having called thereat:

On the day of at On the day of at On the day of at

Description A description of the Defendant, or other person served on behalf of the Defendant [] Sex; F Color of skin; BRN Color of Hair: BLK Age; 35-40 Height; 5'3" Weight: 163LBS

Military Svee Deponent asked person spoken to whether the recipient was presently in military

[X] service of the United States Government or of the State of New York and was informed that the recipient is not. Recipient were civilian clothes and no military uniform Other

[X] "Jane Doe" stated that the Defendant is not in the military.

[A] "rate Doe stated that the Deteriorant is not in the milita

Aston G. Evans II LIC# 1220069

Courty of Borns

Sworn to before to

Le. Re. or MI Accesses

Commenter Expres James 5,20 1 5

Case 1-10 or 01-027 CDA-REW Document 55-8 Fifed 01/29/18 Page 88 of 138 Page ID #:

AFFIDAVIT OF SERVICE

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

Index No. 33659/11 Filed: _____

Attornevs: Kavuli	ch &	Associates.	P.C	١.
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Address: 30 Church Street, Suite 26, New Rochelle, NY 10801

File No. 13816 14285

2246 WEBSTER AVENUE HDFC,

	2240 WEDSTER AFERICATION OF	
	Y3.	
	ERNESTO NUNEZ,	
	EVELYN MARTINEZ,	
tate of New Y	ork County of Nassau SS:	
Lston G. Evans	s II, being duly sworn deposes and says:	
	t a party herein, is over 18 years of age. On May 14, 2011 at 8:00p.m.	
	on Avenue, Apt. 56. New York, NY 10040-3365 erved the within Summons and	
	ERNESTO NUNEZ, Defendant therin named.	
	The state of the s	
individual f	By delivering a true copy of each to said recipient: deponent knew the person	
	erved to be the person described as said person therein.	
Corporation	By delivering to and leaving with and that deponent knew the	
(1	person so served and authorized to accept service on behalf of the Corporation	
Suitable Ago	By delivering a true copy of each to a person of suitable age and discretion	
Person	Said premises is recipients [] actual place of business [X] dwelling house within the	
[X]	state.	
Affixing	Description - top conservational to the Association of the Association	
to Door	By affixing a true copy of each to the door of said premises, which is recipients [] actual place of business [] dwelling house (place of abode) within the state	2.3
0	[] second bieses of occurrent [] a weight house (bases of smoth) within the state	. /
		#20 #20 #20 #20 #20 #20 #20 #20 #20 #20
Май Сору	On May 16, 2011 deponent completed service under the last two sections by	~, -
[X]	depositing a copy of the Summons and Complaint to the above address in a 1*	<u> </u>
	Class properly addressed envelope marked "Personal and Confidential" in an official	
	depository under the exclusive care and custody of the United States Post Office in the S of New York.	LATE:
	Deponent was unable, with due diligence to find the recipient or a person of suitable	Page Table 2
and discret	tion having called thereat:	<u>π≅ρ</u> ,
	On the day of at	
	On the day of an On the day of an	
	OF the differ at	
Descriptio	A description of the Defendant, or other person served on behalf of the Defendant	
[] Sex <u>:</u>	F Color of skin: BRN Color of Hair: BLK Age: 45-50 Height: 5'5" Weight: 150LBS	
Munnarys	ivee Deponent asked person spoken to whether the recipient was presently in military	
[7]	service of the United States Government or of the State of New York and was	
Other	informed that the recipient is not. Recipient were civilian clothes and no military uniform	
[X] "Ja	ane Doe" stated that the Defendant is not in the military,	
		-7.
Sworn to l	before the on this to day of 57	
	Aston G. Evans II	
	1 IC# 12700c0	
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C.	mainin Engine Jane 5,50 L of	

Page 88

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 90 of 138 PageID #: 1713

Bronx County Civit Court Civil Judgment

Plaintiff(s):

Defendant(s):

Emesto Nunez:

Evelop Martinez

٧s.

2246 Webster Avenue, HDFC

Index Number: CV-033659-11/6X

Judgment issuad: On Default

On Motion of:

Kavulich & Associates PC

181 Westchester Avenue, Suite 500C, Port

Chaster, NY 10573-

Interest 11/01/2005 at 9%	\$1,563.58				-
	\$0.00 \$1,563.58	Service Foo Non-Millary Fee	\$25.00 \$0.00	Enforcement Fee Other Disbursaments	\$40.00 \$0.00
Attomsy Fees	\$0.00	Notice of Trial Fee	80.00	Other Costs	\$0.00
Cost By Statute	\$20.00	Jury Demand Fee	\$0.00		φο.υφ
Total Damages	\$4,365.69 Total Co:	sts & Disbursements	\$130,00	Judgment Total	\$4,495,69

The following named parties, addressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC

2246 Webster AVenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Ernesto Nunez

550 Audubon Avenue, Apt. 56, New York, NY 10049-

(2) Evelyn Martinez

707 N. 6th Street, Apt. 2F, Allentown, PA 18102-

Judgment entered at the Bronx County Civil Court, 851 Grand Concourse, Bronx, NY 10451, in the STATE OF NEW YORK in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3

Carol Alt, Chief Clerk Civil Court

Page 1 of 1

1227

IB Bank

America's Must Convenient Bank

TD Bank, N.A. 170) Route 70 East Cherry Hill, NJ 08034-5400 T: 888-751-9000 www.idbank.com

May 13, 2011

13816

TD Bank, N.A. Levy Department P.O. Box 1880 Cherry Hill, NJ 08034

Kavulich & Associates, P.C. 181 Westchester Ave Suite 500C Port Chester, NY 10573

Re: 2246 Webster Avenue, HDFC v. Ernesto Nunez, Evelyn Martinez

Index Number: 046395-05

TD Bank reference number: 307947

Dear Sir or Madam:

TO Bank, N.A., is in receipt of the Information Subpoena you served in connection with the above referenced matter. A search of our records indicates that TD Bank, N.A. maintains an account or accounts in the name of the debtor as set forth below. Please note that no funds have been restrained in connection with this matter, as it was determined that (i) at the time of service the Restraining Notice was void pursuant to NY CPLR § 5222, § 5222(h), § 5222(i) and/or (ii) at the time of an Account Review there were no funds in excess of the Protected Amount as set forth in 31 CFR Part 212.

Account	Name
2893	Emesto J Nunez, Evelyn Martinez
Total	\$15.95

TD Bank, N.A.

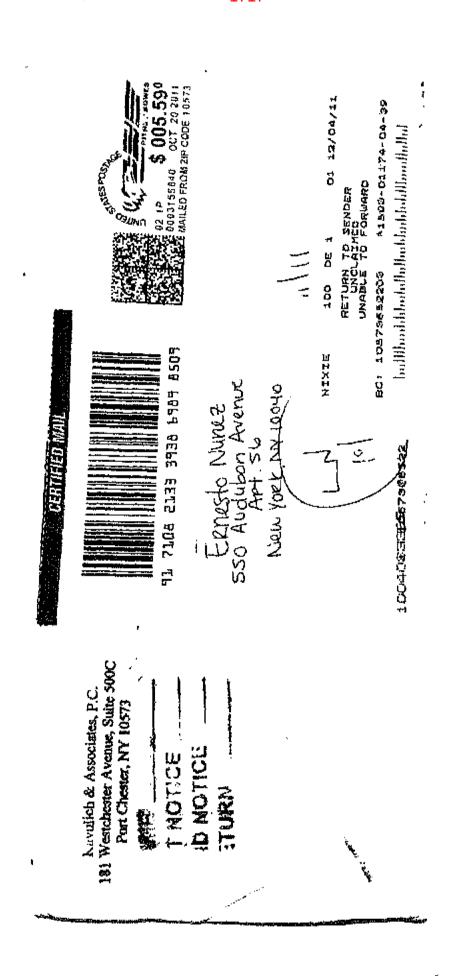
By: Dorianne Melz,

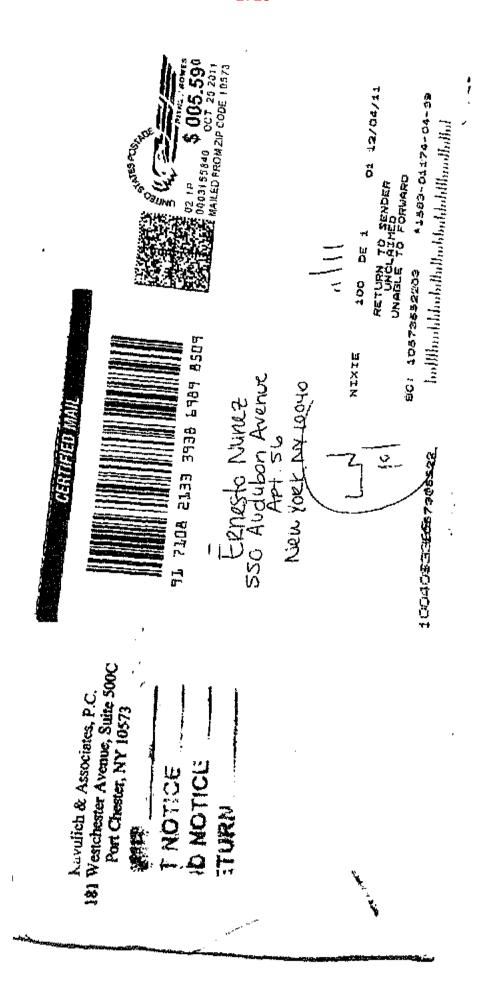
ew Associate

Sworn to before me this 13th day of May 2011

HRISTINA BONCZAK NCTATY FUBILC ALE OF YEW HPRE

" or it of the state of the





A. Signature A. Signature In Agent X. Browned by (Phinad Name) C. Data of Delivery	D. Is delinery address different from Item 17. [2] Yes, in YES, online delinery address below: [3] No		S. Swirter Type PErcentified Neil C. Express Mat C. Prepared Effective Receipt for Merchandise C. Insured Mat C. C.O.D.	4, Restricted College of Extra Fee	122 1918 6989 8509
SENDER COMPLETETHIS SECTION Complete liens 1, 2, and 3, Aso complete lien 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you.	Attach this card to the back of the inquirects, or on the front if episco pentrals. 1. Article Addressed to:	Ermsto Nunez	New YORK, NY 10040		





Registry-SafeRent

TENANT ACCOUNT RECORD REPORTING FORM

Purpose of this form: 1. Register a New Tenant 2. Report the Close of a Tenancy 3. Report the Performance of a Tenant INFORMATION MUST BE COMPLETE AND ACCURATE			
Property Name: 3346	Ubbster Ap. HD.	Face# 3	_
Phone #: 7/8-295.	-288Z Contact Perso	on: <u>Jo<i>Aus</i> </u>	_
Address of Rented Premise Street Address: 2246	"Webster Ang	Apr#:3	-
City Bronx	State: <u>// . </u>	zip: <u>/045</u>	フ
Tenant Account Record is a Move-in Move-out (Satisfactory Move-out (Unsatisfactory	Evicted Skipped	Skip Trace Credit Grant Payment Made	
Move-in Date	Move-out Date	Last Paid Date	
9-16-02	2-19-05		
Reat Amount	Balance Owing	# of Payments Past Due	
583.45	6986.98		
	is Rental Unit (SSN is MAND Name M.I. Social	ATORY): Security# D.O.B	
Kunez Evn	esto	3547	80
MARITHE LUE		<i>Vaa</i>	<i>~</i>

Fax To: 1-200-266-7344 ar Mail To: Registry-SafeRent, Inc. Attn: Director of T.A.R.S P.O. Box 928 Longwood, FL 32752

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 99 of 138 PageID #: 1722

COUNTY OF BRONX: PART 34		INDEX NO. 33659/11 FILE NO. 14285	
2246 WEBSTER AVENUE,	HDFC,		
	Plaintiff,	AFFIRMATION OF SERVICE	
- against -			
ERNESTO NUNEZ, EVELYN MARTINEZ,			
	Defendant. X		

Gary M. Kavulich, Esq., an attorney duly admitted to practice law before the courts of the State of New York hereby affirms the following under the penalty of perjury.

On May 3, 2013, I served the within Affirmation in Opposition upon Ernesto Nunez and Evelyn Martinez, the Defendants' in this action, by depositing a true copy in a post-paid envelope addressed to:

Ernesto Nunez 933 S Front Street Allentown, PA 18103

Evelyn Martinez 933 S Front Street Allentown, PA 18103

in an official depository under the exclusive dominion and control of the United States Postal Service within the State of New York via regular first class mail

Gary M. Raymich, Esq.

503

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX: PART 34		Index No. 33659/11 File No. 14285	9
2246 WEBSTER AVENUE,	HDFC,		3
	Plaintiff,	AFFIRMATION IN C	PPOSITION
- against -	·		
ERNESTO NUNEZ, EVELYN MARTINEZ,	Defendants.		

GARY KAVULICH, ESQ., an attorney duly admitted to practice law before the Court of the State of New York, hereby affirms under the penalty of perjury:

- 1. I am a member of Kavulich & Associates, P.C., attorneys for the Plaintiff herein. As such, I am fully familiar with the facts and circumstances of the within proceeding, except as to those matters stated upon information and belief, as to those matters I believe them to be true. The basis of my belief is information supplied to me by my client, information contained within the court file and information maintained within my office.
- 2. I make this affirmation in opposition to the Defendants' Ernesto Nunez and Evelyn Martinez Orders to Show Cause which seek to restore case to the calendar and request that the judgment be vacated. Please see Defendants' instant Order to Show Cause annexed hereto as Exhibit "1."

STATEMENT OF THE UNDISPUTED FACTS

3. On or about March 1, 2005, the Plaintiff entered into a one (1) year lease agreement with the Defendant for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see a copy of the Plaintiff's agent, Janine Losey, annexed hereto as Exhibit "2." Annexed hereto as Exhibit "3" is a copy of the said lease agreement.

- 4. On or about February 19, 2005, the Defendants were evicted from the premises. Please see aforementioned Exhibit "9."
- 5. The Plaintiff thereafter commenced the instant proceeding against the Defendants for breach of a lease agreement by service of a summons and complaint on or about March 29, 2011. Please see a copy of said summons and complaint annexed hereto as Exhibit "4." Please see also a copy of the affidavit of service for the Defendants' annexed hereto as Exhibit "5."
- 6. Thereafter, the Defendants failed to interpose an answer to said summons and complaint and the Plaintiff was then awarded a judgment in the sum of \$4,459,69. Please see a copy of the judgment annexed hereto as Exhibit "6."
- 7. Plaintiff then commenced execution measures pursuant to that judgment and on or about May 13, 2011, by serving an information subpoena with a restraining notice on the Defendants' current financial institution.
- 8. Pursuant to that information subpoena the funds were below the attachable limit. Please see a copy of said report annexed hereto as Exhibit "7."
- 9. Plaintiff then commenced execution measures pursuant to that judgment and on or about March 29, 2012, it caused New York City Marshall Stephen Biegel by serving a income execution upon the Defendant Ernesto Nunez current place of employment.
- 10. Pursuant to that income execution the Plaintiff has received \$3,169.02 towards the satisfaction of the underlying judgment.
- 11. Thereafter, the Defendants' moved via an Order to Show Cause to vacate the default judgment for which a court date was set for April 23, 2013 and was adjourned to May 17, 2013.
 - 12. Plaintiff now opposes Defendants' motion.

Page 101

THE DEFENDANT'S INSTANT MOTION DOES NOT DEMONSTRATE AN EXCUSABLE DEFAULT AND MERITORIOUS DEFENSE. THEREFORE THE MOTION SHOULD BE DENIED

- 13. In order to meet the standard to allow this Court to vacate a judgment the Defendants' are required to demonstrate both a reasonable excuse for the default and the existence of a potentially meritorious defense to the action. CPLR 5051(a)(1).
- 14. Moreover, should the Defendants' demonstrate a reasonable excuse for the default, a Court must nonetheless uphold the default when the Defendants' papers submitted in support thereof are replete with self-serving, vague, unsubstantiated denials, and unsupported legal conclusions. Thapt v. Lutheran Med. Ct., 89 AD3d 837 [2d Dep't 2011]; Garal Wholesalers, Ltd. v. Raven Brands, Inc., 82 AD3d 1041 [2d Dep't 2011].
- 15. The Defendants', in their affidavit in support, asserts as a reason for requesting a new trial is specifically that "I do not owe the debt, I did not receive the summons and complaint, unjust enrichment and laches." Please see the aforementioned Exhibit "1."
- 16. However, the Defendants do not provide adequate or accurate proof that they do not owe a debt to the Plaintiff. As a result, the Defendants' explanation is only self-serving and unsubstantiated.
- 17. As to the Defendant Ernesto Nunez claim that he did not receive the summons and complaint. Please see the aforementioned Exhibit "5" also see a copy of the certified mail to the Defendant Ernesto Nunez that was returned by the Post Office marked "unclaimed" annexed hereto as Exhibit "8."
- 18. The certified mail was addressed to the address of the Defendant, Ernesto Nunez stated on the Order to Show Cause.

- 19. However, the Defendant Ernesto Nunez does not provide adequate or accurate proof that he did not receive a copy of the summons and complaint. As a result, the Defendant's reason is only self-serving and unsubstantiated.
- 20. As stated earlier, on or about March 1, 2005, the Plaintiff entered into a one (1) year lease agreement with the Defendants' for the premises known as 2246 Webster Avenue, Apartment 3, Bronx, New York 10458. Please see the aforementioned Exhibit "3."
- 21. On or about February 19, 2006, the Defendants' were evicted from the premises. Please see aforementioned Exhibit "9."
- 22. As a result, the Defendants' are liable for the rent payments for the months of October, 2005 through and including March, 2006 even though they had earlier been evicted from the premises and no longer lived there. Please see aforementioned Exhibit "9."
- 23. Moreover, the tenant ledger we currently posses clearly show that the Defendants at the time of their eviction had a balance of \$6,986.98. Annexed hereto as Exhibit "9" is a copy of the said tenant ledger.
- 24. Thus, this Court should find the Defendants' reason not persuasive and thus not reasonable pursuant to CPLR 5051(a)(1).
- 25. Even if this Court finds the Defendants' above reason to constitute a reasonable default, the Defendants' must additionally allege a meritorious defense in order for their motion to be successful.
 - 26. The Defendants' fail to allege a meritorious defense.
- 27. Thus, the Defendants' alleged defense has therefore failed to provide anything but mere conclusory statements.
- 28. Moreover, the Defendants' alleged meritorious defense does not state any cognizable legal principle.

- 29. Thus, in accord with *Thapt* and *Garal*, this Court must uphold the herein judgment agreed to by both parties.
- 30. Conversely, the Plaintiff's claim has merit as the Defendants' breached the parties' lease agreement by not paying rent pursuant to said lease. To date, the Defendants' owe the Plaintiff the amount agreed to in the judgment in the amount of \$4,495.69 (less payment of \$3,169.02) plus interest from October 1, 2005, costs, disbursements and fees. Please see the aforementioned Exhibit "6."
- 31. As the Defendants' fail to set forth both an excusable default and a meritorious defense, and the Plaintiff continues to suffer from the unsatisfied debt, the Plaintiff respectfully requests this Court to deny the Defendants' motion to vacate the judgment.

WHEREFORE, as no legal or equitable basis has been stated or exists, Plaintiff

respectfully asks that this Court deny the instant motion.

Dated: April 24, 2013 Port Chester, NY

Kavulick & Associates, P.C. By: Gary Kavulich, Esq.

Attorney for Plaintiff

181 Westchester, Ave., Suite 500C

Port Chester, NY 1057

(914) 355-2074

County of Bronx Part 39	Index Number: CV-033689-11/BX
2246 Webster Avenue, HDFC	ORDER TO SHOW CAUSE
-against- Ernesto Nunez et al.	To restore case to the calendar, and vacate any
	judgment, liens and income executions on this defendant on this index number.
	allow proposed answer or dismissing the action
UPON the annexed affidavit of Erneste N herein:	uncz, sworn to on April 9, 2013, and upon all papers and proceedings
Let the Claimant(s)/Plaintiff(s) or	Claimant(s)/Plaintiff(s) anorney(s) show cause at:
Bronx Civil Court	(a)(a) (a) (a) (a) (a) (a) (a) (a) (a) (a)
851 Grand Concourse	1 1
Bronx, NY 10451	14/23/13
Part 34C Room 504	0.20 ANA
or as soon thereafter as counsel me	at 9:30 AM / / / / ay be heard, why an order should not be made:
VACATING the Judgment, and all income	executions and restraining notices, if any, restoring the case to the
calendar, deeming the proposed answer file	ed and/or dismissing the action if warranted, and/or granting such and
further relief as may be just.	-
PENDING the hearing of this Order to Sho	ow Cause and the entry of an Order thereon, let all proceedings on the
part of the Claimant(s)/Plaintiff(s), Claiman	nt(s)/Plaintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of
the City of New York for the enforcement o	f said Judgment be stayed.
SERVICE of a copy of this Order to Show	Cause, and annexed Affidavit, upon the:
Claimant(s)/Plaintiff(s) or pamed attorney	
(Judge to thitial) remember ment dayme	(Judge to Initial)
by Personal Service by "In-Hand-E	
by Certified Mail, Return Receip	
by First Class Mail with official Po Certificate of Mailing	ost Office by First Class Mail with official Post Office Certificate of Mailing
on or before 4/10/13	
,	, shall be deemed good and sufficient
PROOF OF SUCH indicated above	SERVICE may be filed with the Clerk in the Part on the return date of this Order to Show Cause. Sheriff/Marshal:
Mail to Attorney:	Sheriff/Marshal:
Kayulich & Associates PC	NYC Marshal Double Las Line
(Counsel for Pitf),	Blegel, Stephen, Marshal
at 181 Westchester Avenue, Suite 500C,	Suite 200 WAST FROM
Port Chester, NY 10573	New York, NY 10018-3615
	Sheriff/Marshal: NYC Marshal Blegel, Stephen, Marshal 109 W 38 Street Suite 200 New York, NY 10018-3615
	A4-10-13 A
April 9, 2013	
DATE	Hon. Jose A. Padilla, Civil Court Judge, Acting JSC (NYC)

		A STATE OF THE PARTY OF THE PAR
<u> </u>	46 Webster Avenue, HDFC -against- nesto Nunez et al.	Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this Index number. aflow proposed answer or dismissing the action
	of New York, County of New York:	
	Traesto Nunez, being duly sworn, deposes an	says:
1Ei	a) I am the Party named as (Defendant)(I	Respondent) in the above titled action
2	a) I have been served with a summons at b) I have not been served, and my first n skip #3, #4, #5, and go to #6] a Notice of Default Judgment mailed a Restraining Notice on my bank acc	nd complaint in this action. [NOTE: if Small Claims skip #3, and go to #4] otice of legal action was [NOTE: if you complete any of #2b,
3,	a) I did not appear and answer in the Cler	k's Office because:[NOTE: if you complete # 3a, skip and go to #6].
	b) I did not appear and answer in the Clerk's C and I received a date for trial, but the answer was entered late Other:	Office .
4.	a judgment was entered after the tria a judgment was entered against me b Other:	is made between claimant/plaintiff and defendant. I.
5.	My reason for not complying with the stipulation is following the order of the Court is appearing in court on the date schedu Other:	icd for trial is
6.)_ Ok	I allege that I have a good defense because	NO HORDAU CLESCAL ADA DIFOULL
7.	E N a) I have not had a previous Order	to Show Cause regarding this index number. Show Cause regarding this index number but I am making this application
8.	I request that the Judgment be vacatimely filed.	sted, that the case be restored to the calendar AND that the answer be deemed
Swom	to before me this day April 9, 2013	No. of the same of
Signare	HA Dan 400.	(Sign Name) Ernesto Nunez 550 Audubon Avenue Apt. 56 New York, NY 10040

C	county of Broox	HART TO CYANGESP-17/BX
22	46 Webster Avenue, HDFC	PROPOSED ANSWER IN
Er	-against- nesto Nunez et al.	WRITING
	THE THE PARTY OF T	ACTION FOR MONEY ONLY
as fo	ollows: 933 5 Front St. Allend	Poek, マン 1904 0 answers the Complaint C い ハ ドA コリンろ
C	Theck all that apply)	
1	General Denial: I deny the allegations in the complaint	
	SERVICE	
2	Tdid not receive a copy of the summons and complaint	
3	I received the Summons and Complaint, but service was not DEFENSES	correct as required by law.
4	I do not owe this debt	
5	I did not incur this debt. I am the victim of identity theft or m	israken identity.
6	I have paid all or part of the alleged debt.	
7	I dispute the amount of the debt.	
8	I do not have a business relationship with Plaintiff. (Plaintiff.	f lacks standing.)
9		
10	TIME .	
11		
12	The debt has been discharged in bankruptcy.	, , , , , , , , , , , , , , , , , , , ,
13	The collateral (property) was not sold at a commercially reaso	nable price.
14	Unjust enrichment (the amount demanded is excessive compa	-
15	Violation of the duty of good faith and fair dealing.	.
16	Unconscionability (the contract is unfair.)	
17	Laches (plaintiff has excessively delayed in bringing this laws	uit to my disadvantage.)
18	Defendant is in the military.	- 4
19	Other:	
OTE	(IER	WASHINGTON TO THE REAL PROPERTY OF THE PROPERT
20	Please take notice that my only source of income is wages	,which is exempt from collection
_	INTERCLAIM	- Total Concondit.
21	Counterclaim(s):\$ Reason:	
-	VERIFICATION-	
State	of New York, County of Bronx ss:	
Erno	to Nunez being duly sworn, deposes and says: I am the Defendant in this	proceeding. I have read the Answer in Writing
Cante	umer Credit Transaction and know the contents thereof to be true to my own nation and belief, and as to those matters I believe them to be true	in knowledge except as to those matters stated on
	APR - D MARI	
Swort	to before me this day of 20	Ci-
	moderns bee	Defendant
	/	

County of Bronx Part 39	Index Number: CV-055689-1178X
2246 Webster Avenue, RDFC	ORDER TO SHOW CAUSE
magainst -	- to the calendar and vacate any
Ernesto Nunez et al.	indepent liens and income executions on any
	I - I - I - I - I - I - I - I - I -
* TOON I	atlow proposed answer or dismissing the action
herein:	z, sworn to on April 9, 2013, and upon all papers and proceedings
Let the Claimant(s)/Plaintiff(s) or Claim	ant(s)/Plaintiff(s) attorney(s) show cause at:
Bronx Civil Court	11/22/12
851 Grand Concourse Bronx, NY 10451	4/42/13
Part 3/1C	/ /
on 1874 23,7013 Room 504	at 9:30 AM
or as soon thereafter as counsel may be l	
	tions and restraining notices, if any, restoring the case to the
	or dismissing the action if warranted, and/or granting such and
further relief as may be just	
PENDING the hearing of this Order to Show Cat	use and the entry of an Order thereon, let all proceedings on the
part of the Claimant(s)/Plaintiff(s), Claimant(s)/P	laintiff(s) attorney(s) and agent(s) and any Marshal or Sheriff of
the City of New York for the enforcement of said	Judgment be stayed.
SERVICE of a copy of this Order to Show Cause	e, and annexed Affidavit, upon the:
me a series as a common atternav(s)	Sheriff or Marshalt
(Indoctorinitial)	the stage to minds
by Rossonal Service by in fland Denvel	dy 1 cisonal service by 11 riand Delivery
L. Cortified Mail Return Receipt Requ	lestedby Certified Mail, Return Receipt Requested
by First Class Man with official rost on	by rust class with official Postonice
Certificate of Mailing	Certificate of Mailing
on or before 4/0/15, sha	Il be deemed good and sufficient
· / /	ICE may be filed with the Clerk in the Part
	return date of this Order to Show Cause.
Mail to Attorney	Biegel Stephen, Marshall 109 West 38th Street
Kayulich & Associates P.A.	Rice O Stephen, MASSING
®co-upeal for PIΠ)« ₹	ing the 25th Street
, at 181 Westchester Avenue,	101 Was 30 In
senite 500C.	Suite 200
Port Chester, NY 10573	1 New York 14 10018
April 9, 2013	449019
DATE Figh.	Jose A. Padilla, Civil Court Judge, Acting \$5000000000000000000000000000000000000
	and much rumania de m
	Moral for due
	wall along man 1-to 13

COUNTY OF EACH	year-e-a-a-a-a-a-a-a-a-a-a-a-a-a-a-a-a-a-
= against HDFC = against = Ernesto Nunez et al.	Affidavit in support of an order to show cause to restore case to the calendar, vacate any judgment, liens and income executions on this defendant on this index number, allow proposed answer or dismissing the action
State of New York, County of New York:	
TO THE STANFACTURE OF THE PROJECT OF THE STANFACTURE OF THE STANFACTUR	
(Defendant's initials)	says:
I. (a) I am the Party named as (Defendant)(Res	pondent) in the above titled action
2. A) I have been	pendent) in the above titled action
skip #3, #4, #5, and on to #61	complaint in this action. [NOTE: if Small Claims skip #3, and go to # 4] to of legal action was [NOTE: if you complete any of #2b,
* NOUCE Of Default bulleness of the	ma .
a copy of an Income Execution served of	n
the fourth the court of the cou	to co-deternidants garn shirrent
	Office because:[NOTE: if you complete # 3n, skip and go to not.
 b) I did not appear and answer in the Clerk's Officential 	GE
and I received a date for trial.	
but the answer was entered late Other:	
a judgment was entered after the trial. a judgment was entered against me by de Other:	•
5. My reason for not	
complying with the stipulation is	
tonowing the order of the Court is	
appearing in court on the date scheduled	ior trial is
Lailege that I have a good defense because:	Harsball close Apt before the firm
57**** "fttl="(a) I have not had a previous Order to \$	Show Cause regarding this index number. « Cause regarding this index number but I am making this application
because:	and the making this application
1 request that the Judgment be vacated timely filed.	, that the case be restored to the calendar AND that the answer be deemed
Sworn to before me this day April 9, 2013	NG
Marchests Acc	(Sign Name) Cully morting Evelyn Martinez
Signature of Court Employee and Title	707 N. 6th Street
	Apt. 2F
	Allentown, PA 18102

County of Bronx	Index No: CV-033659-11/82
2246 Webster Avenue, HDFC	PROPOSED ANSWER IN
できのみとられた。	PROPOSED ANSWER IN
Ernesto Nunez et al.	WRITING
	ACTION FOR MONEY ONLY
Defendant, Evelyn Martinez, at 707 1 6th Spect. A	pt, 27, Allentown, PA-18102 answers the Complaint as
follows:	nt-2F-Allentovens-125-1-2-1113
Check all that apply) Attentown P	A 18103
General Denial: I deny the allegations in the	Latina
SERVICE	complaint
The same of the sa	
I did not receive a copy of the summons and of	complaint
I received the Summons and Complaint, but s DEFENSES	service was not correct as required by tax-
4 I do not owe this debt	
5 I did not incur this debt. I am the victim of ide	entity theft or mistaken identity.
6 I have paid all or part of the alleged debt.	,
7 I dispute the amount of the debt.	
8 I do not have a business relationship with Plai	intiff. (Plaintiff lacks standing.)
	no record of plaintiff having a license to collect a debt.
10 Plaintiff does not allege a debt collection licer	
11 Statute of Limitations (the time has passed to	sue on this debt; more than six years.)
The debt has been discharged in bankruptcy.	
13 The collateral (property) was not sold at a con	nmercially reasonable price.
14 Unjust enrichment (the amount demanded is e	
Violation of the duty of good faith and fair dea	aling.
Unconscionability (the contract is unfair.)	
17 Laches (plaintiff has excessively delayed in br	inging this lawsuit to my disadvantage.)
Defendant is in the military.	
19 Other:	The state of the s
OTHER	1130 000 -
OTHER Please take notice that my only source of incor	ne is which is exempt from collection.
COUNTERCLAIM	
Counterclaim(s):\$Reason:	
VERIF	ICATION-
itate of New York, County of Bronx ss:	a Defendant in at the
velyn Martinez, being duly sworn, deposes and says. I am of	e Defendant in this proceeding. I have read the Answer in Writing be true to my own knowledge except as to those matters stated or be true.
onsumer Credit transaction and tales making I believe them to those making I believe them to those making I believe them to	V OC LIGE
Holmstron and county with the All water	L'alling maket!
worn to before me this day of 20	x Evelyn mating
Marsherton tree	Defendant

CIVIL COURT OF THE CIT COUNTY OF BRONX: PAI	TY OF NEW YORK RT 3C	NDEX NO. 33659/11 FILE NO. 14285
2246 WEBSTER AVENUE	HDFC,	
	Plaintiff,	AFFIDAVIT IN
-against-		OPPOSITION
ERNESTO NUNEZ, EVELYN MARTINEZ,	Defendants.	
STATE OF NEW YORK COUNTY OF BRONX)) ss)	

- I, Janine Losey, being duly swom deposes and says:
- That I am the managing agent for the Plaintiff, 2246 Webster Avenue, HDFC 1. herein, and as such I am fully familiar with the facts and circumstances of this proceeding.
- The Plaintiff entered into a lease agreement with the Defendants, for a period of 2. one (1) year from September 16, 2002 through and including September 30, 2003 for the premises known as 2246 Webster Avenue, Apt. 3, Bronx, NY 10457.
- The Parties thereafter entered into a series of renewal lease agreements, with the 3. latest renewal lease agreement ending on March, 2006.
- Defendant then breached said renewal lease agreement and allowed a balance of 4. \$2,802.11to accumulate representing rental arrears for the months of October, 2005 through and including March, 2006 at the agreed upon monthly sum of \$583.45.

- 5. On or about February 19, 2005, the Defendants' were evicted from the premises known as 2246 Webster Avenue, Apr. 3, Bronx, New York 10458.
- ő. The Plaintiff then brought this instant action seeking to recover arrears balance owed by Defendants' to Plaintiff,
- 7. Thereafter, Defendants' failed to interpose an answer thereby defaulting on this action.
- 8. Accordingly, on January 12, 2012, a judgment was entered in the amount of \$4,495.69.
- 9. On, or about March 29, 2012, Plaintiff then commenced Income Execution measure pursuant to that judgment on the defendant, Ernesto Nunez current place of employment.
- 10. As of this date, Plaintiff has received \$3,169.02 towards the satisfaction of the said judgment.
- Therefore, the remaining amount of \$2,802.11 remains due and outstanding. II.
- My attorney has further advised me that the Defendant now seeks to vacate the 12. judgment taken against them in this matter.

WHEREFORE, your deponent prays that the Court deny the instant motion as no legal or equitable basis has been provided.

Sworn to before me this

day of Apřil, 2013

NOTARY PUBLIC STATE OF NEW YORK TARA J. GREKULAK

No. Creedioupes

Qualified in Wester Safes County My Commission Expires Fabruary 02. 2017



RENT STABILIZED LEASE ATTACHED RIDER SETS FORTH RIGHTS AND OBLIGATIONS OF TENANTS AND LANDLORDS UNDER THE RENT STABILIZATION LAW. (LOS DERECHOS Y RESPONSABILIDADES DE INQUILINOS Y CASEROS ESTÁN DISPONIBLE EN ESPAÑOL.)

	CASEROS ESTANDAGE
Owner and Renter make this apartment lea	es agreement as follows:
Owner's Name: 2246 WEBSTER AVENU	E HDEC
Owner's Address for Notices: 660 E. 183 S	T BY NV 10458
Renter's Name: LAR ERNESTO NUNEZ	Social Security #: 3547
2	Social Security #:
Renter's Present Address: 677 BROOK AVEN	
Address of Premises to Be Rented: 2246 WEBS	TED AVENUE ROONX NY 10457
Apt. No.: 3 Term of This Lease (Check one): 💢	792.50
Date of Lease: 09/16/02 Beginning: 0	PREFERRED RENT: \$525.00 09/16/02 Ending: 09/30/03
* If a preferential tent is being charged, the amount of the pre-	
1. HEADINGS: Paragraph headings are only for ready reference to the terms of this lease. 2. CONDITION "AS IS": Renter acknowledges inspecting the apartment prior to signing this lease and accepts the apartment in the condition it is in as of such inspection. Renter acknowledges that the apartment is free of defects. Owner warrants that the apartment and building are fit for habitation and there are no conditions dangerous to health, life or safety. 3. USE AND OCCUPANCY OF APARTMENT: The apartment is to be used and occupied for private residential purposes only, as the primary residence of Renter. The apartment may be occupied only by Renter named in this lease, Renter's immediate family, or other occupants in accordance with the applicable provisions of law, Renter agrees that the apartment will be occupied only by the following individuals, in addition to Renter: Name: Birth Date: Relation to Renter: Name: Birth Date: Relation to Renter: 2. Spouse 2. Daughter Renter is obligated to advise Owner, in writing, if any additional occupant more as into the apartment. Such notice must be furnished by Renter to Owner within 10 days of the date such additional occupant moves into the apartment. The apartment may not be occupied by more than the number of occupants permitted by	cancel this lease and obtain a refund of money deposited. Owner will notify Remer as of the date possession is available. The ending date of the lease term will not change in the event Owner is mable to give possession as of the beginning of the lease term. 5. RENT, ADDED RENT, RENT ADJUSTMENTS: a.Rent payments for each month are due on or before the first day of each month at the address above or at a location designated by Owner in writing. Notice from Owner to Renter that real is due is not required. The rent must be paid in full without deductions. The first month's rent and added rent must be paid when Renter signs this lease. b. Renter may be required to pay other charges and fees to Owner under the terms of this lease. They are called "added rent." This added rent will be payable as rent, together with the next monthly rent due. If Renter falls to pay the added rent on time, Owner shall have the same rights against Renter as if Renter failed to pay rent. e. If this apartment is subject to the rent stabilization lews, the rent to be paid during the term of this lease may be adjusted, prospectively or retroactively, pursuant to an order of the New York State Division of Housing and Community Renewal (DHCR). Renter agrees to be bound by such determination, and to pay any increase in rent in the manner specified by the agency. In the event the applicable rent guideline has not been fixed by the Rent Guidelines Board (RGB) by the date the lease to accreased retroactively to the commencement date of the lease consistent with orders issued by the RGB. Added tent as defined herein shall include, but is not limited to:
§27-2075 of the Housing Maintenance Code or by §235-for the	J-51 TENANT DAMAGES TO C
4.RENTER'S POSSESSION OF APARTMENT: Owner shall not be liable for failure to give Renter possession of the apartment on the beginning day of the lease term. Rent shall be payable as of the beginning of the term unless Owner is unable to give the beginning of the term unless Owner is unable to give	6.FAILURE TO PAY RENT ON DUE DATE: Rent is due by the first day of each month. Payment after the 10th day of each month shall be considered a "late payment." Renter expressly agrees and understands that three (3) on more late payments in any twelve month period shall be deemed to be a failure to comply

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if any, shall be used by messengers and trades people ing and leaving and the passenger elevators, if any, shall med by them for any purpose.

UNDRY: Laundry machines if any, provided by Owner, be used by Renter in the manner and at the times that Owner designate. Renter shall not dry or air clothes on the roof or the serrace or balcony, if any, Renter may use loundry machines. any, at their own risk.

LOBJECTIONABLE CONDUCT: Renter, their families. guests, employees, or visitors shall not engage in any conduct which makes the apartment or building less fit to live in for Renter or other occupants. Remer shall not make or permit any disturbing noises in the apartment or building or permit anything to be done that will interfere with the rights, comfort or convenience of other renters. Renter shall not play a musical instrument or operate of allow to be operated audio or video equipment so as to discurb or annoy any other occupant of the building.

43.NO PROJECTIONS: Renter may not install or cause to be installed anything on the roof or outside wall of the building or

any balcony, terrace, or window,

44 MOVING: Renter can use the elevator or service elevator, if any, to move furniture and possessions only on designated days and at designated hours. Owner shall not be liable for any costs, expenses or damages incurred by Renter in moving because of delays caused by unavailability of the elevator. Renter shall be liable for any damage caused to the building or the apartment during such move.

45.WAIVER OF FOREIGN SOVEREIGN AND DIPLOMATIC IMMUNITY: Renter represents that he is not subject to foreign sovereign or diplomatic immunity. Renter expressly waives the doctrine of foreign sovereign immunity and diplomatic immunity and consents to the jurisdiction of the Housing Court and all other courts. Renter expressly represents that in the event a judgment is obtained against him. Owner may enforce the judgment against any property or assets of Renter, wherever they

46.MILITARY STATUS: Renter represents that he is not in the United States military, and is not dependent upon a member of the United States military. Renter must notify Owner within ten days of enlistment in the military.

47. PARTIES BOUND: This lease agreement is binding on Owner and Renter, and on all those who claim a right, or have a right, to succeed to the legal interest of Owner and Renter.

48.FORMS: Renter agrees to complete any and all forms that may be requested by Owner from time to time.

49 SUBORDINATION: The rights of Renter, including all rights granted under the terms of this lease are, and shall be, subject to and subordinate to the terms of any morngage on the building or the land under the building which now exists, or which may hereafter exist. The foregoing shall include but not be limited to any modification, consolidation or extension agreement of any

existing mortgage on the land or building. 50.SINGULAR/PLURAL and JOINT/SEVERAL: The use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires. If more than one entiry is renting

the apartment, their obligations shall be joint and several. 51. CONDEMNATION/EMINENT DOMAIN: If the building, or any part of the building, is taken or condemned by a public authority or government agency, this icase will end on the date of such taking In such event. Renter will have no claim for damages against Owner based upon such taking, and Renter will be required to surrender the apartment to Owner upon 30 days written notice from Owner to Renter of such government taking.

52.CONSTRUCTION/CONVENIENCE: Neighboring buildings may be the subject of construction, renovation or demolition. Owner will not be liable to Renter, nor shall Renter seek to hold Owner liable for interference with views, light, air flow, or ventilation, the covenant of quiet enjoyment, or breach of the warranty of habitability whether such interference is temporary or permanent, if such interference results from activities conducted

on adjoining Owners' properties.

51.NO WAIVER: The failure of Owner to insist at any time upon strict performance of any clause in this least shall not be construed as a waiver of Owner's rights. No waiver by Owner of any provision of this lease can be made unless made in writing by Owner, Acceptance of rent by Owner with knowledge of the breach of any condition or term of this lease is not a waiver of the breach. 54, CREDIT REPORTS: Renter authorizes Owner to use the Social Security number of Renter to obtain any and all credit reports for the purpose of the initial lease or any renewal thereof now and no more than five years after the expiration of this lease or any renewal thereof, and fully understands that these reports will be used by owner in connection with Renter's occupancy of the apartment.

55.ENTIRE AGREEMENT: Owner and Renter have read this lease and agree that it contains the entire understanding of the parties regarding the rental of the subject apartment. The lease can only be changed in writing. The writing must be signed by

both Owner and Renter.

If any part of this lease is determined to be unlawful, the remaining provisions of the lease will remain valid and in full force and effect.

2216 WEBSTER AVENUE HDFC Owner/Agent (on behalf of Owner) ERNESTO NUNEZ Renter Renter

4 of 4

CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX

2246 Webster Avenue, HDFC, Plaintiff.

INDEX NO. FILE NO. LIBITED 14285

-against-

SUMMONS
Place of Venue is Plaintiff's
place of business:

Ernesto Nunez, Evelyn Martinez,

2246 Webster Avenue Bronx, NY 10457

Defendant(s)

To the above named defendants(s):

YOU ARE HEREBY SUMMONED to appear at the CIVIL COURT OF THE CITY OF NEW YORK, COUNTY OF BRONX at the office of the clerk of the said Court at 851 Grand Concourse, Bronx, NY 10451, in the COUNTY OF BRONX, State of New York, within the time provided by law as noted below and to file an answer to the below complaint with the clerk: upon your failure to answer, judgment will be taken against you for the sum at 87,486.98 with interest thereon from May 1, 2005 together with costs of this action.

DATED: March 29, 2011

By: Gary Kavolich, Esq., Kavolich & Associates, P.C. Attorney for Plaintiff 181 Westchester Avenue Suite 500C Port Chester, NY 10573 (914) 355-2074

Defendant's Address:
Ernesto Nunez
550 Audubon Avenue, Apt. 56
New York, NY 10040-3365

Evelyn Martinez, 707 N. 6th Street Apt. 2F Allentown, PA 18102-1607

Note: The law provides that: (a) If the summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If the summons is served by any means other than personal delivery to you within the City of New York, you must appear and answer within THIRTY days after proof of service thereof is filed with the Clerk of this Court.

COMPLAINT

FIRST ACTION: Plaintiff seeks to recover damages from defendant(s) for breach of a lease agreement in the sum of \$6,251.98 representing rental arrears for the months of May, 2005 balance of \$417.48; June, 2005 through and including March, 2006 at the agreed monthly sum of \$583.45 for the premises known as 2246 Webster Avenue, Apt.3 Bronx, NY 10457 together with costs and disbursements of this action and for such other and further relief as the court may deem just.

SECOND ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$735.00 representing damages together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

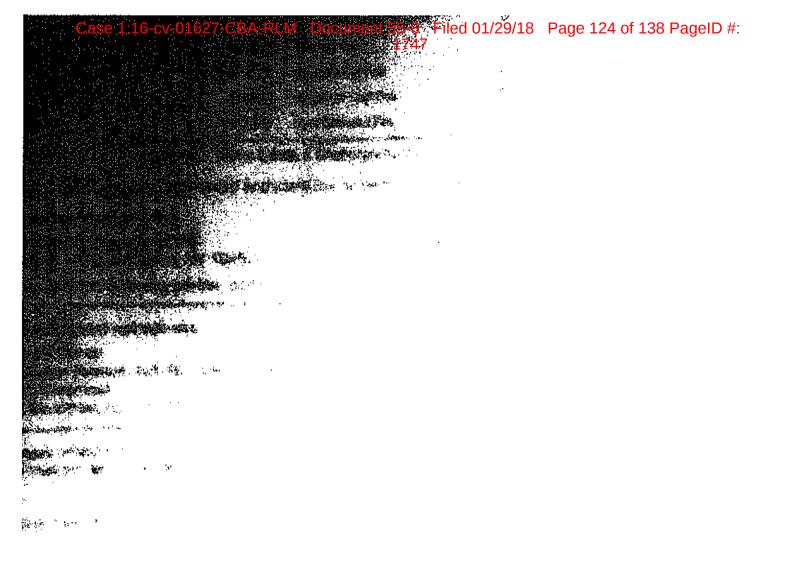
THIRD ACTION: Plaintiff seeks to recover damages from the defendant in the sum of \$500.00 representing reasonable attorneys fees together with costs and disbursements of this action and for such other further relief as the Court may deem just.

WHEREFORE, Plaintiff demands judgment (A) on the First Action, in the sum of \$6,251.98 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (B) on the Second Action, in the sum of \$735.00 plus interest from May 1, 2005 together with costs and disbursements of this action and for such other and further relief as the Court may deem just, (C) on the Third Action, in the sum of \$500.00 together with costs and disbursements of this action and for such other and further relief as the Court may deem just.

The Plaintiff in this action is NOT required to be licensed by the New York City Department of Consumer Affairs.

CIVIL COU	RT OF THE CONTROL AFFIDAVIT OF SERVICE	æ			
CIVIL COURT OF THE CTTY OF NEW YORK COUNTY OF BRONX			Index No. 33659/11 Filed:		
Attorneys: K.	avulich & Associates, P.C.				
Address: 30	Church Street Series, P.C.				
	Church Street, Suite 26, New Rochelle, NY	7 10801	File No. 13816	<u>14265</u>	
	2246 WEBSTER AVENUE	HDFC,			
	VS.				
	ERNESTO NUNEZ, EVELYN MARTINE	7			
State of New Y	ork County of Nassau SS:	<i>د</i> ے			
Asion G. Evan	s. Il., being duly sworn deposes and says:				
Deponent is no	ot a party herein, is over 18 years of age. On May 13	2011 at 7:2	3 × m		
At: 707 N. 6th	Street, Apt. 2F, Allentown, PA 18102-3365 serve	ut the within	Eventure and Came	.	
on: EVELYN	MARTINEZ, Defendant therin named	YI CHE MICHEL	эшткия яки сощр	គេ អ េ	
Individual	By delivering a true copy of each to said recipient: d	enovent kven	the north		
	erved to be the person described as said person there		a cite bei son		
		_ -			
Corporation	By delivering to and leaving withs	nd that depor	ent knew the		
[]	person so served and authorized to accept service or	n behalf of the	e Corporation	#200 mm	
Suitable Age	• • • • • • • • • • • • • • • • • • • •			- '	
Person	Said premises is recipients [] actual place of busin	ess [X] dwell	ing house within the	L>3	
[X]	state.			IN: L/5 —	
Affixing	By affixing a true copy of each to the door of said pr	emises which	h ie pecinippes	<u></u>	
to Door	[] actual place of business [] dwelling house (place)				
В	Q O Q O Q O			-∰ Na	
				N	
Mail Copy	On May 14, 2011 deponent completed service under				
[X]	depositing a copy of the Summons and Complaint to				
	Class properly addressed envelope marked "Persona depository under the exclusive care and custody of the			Ptnto	
	of New York.	هاج تجارس عبر	TEO 1 454 CALINE III III E	J.Car.	
	Deponent was unable, with due diligence to find	the recipient	or a person of suitable	52e	
and discretio	n having called thereat:			•	
	On the day of at				
	On the day of at				
	On the day of at				
Description	A description of the Defendant, or other person serve Color of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age; 35-40 F	d on behalf of leight: 5°3" V	f the Defendant /eight: 163LBS		
Military Svo	e Deponent asked person spoken to whether the recipi	ent was prese	ndy in military		
[7]	service of the United States Government or of the Sinformed that the recipient is not. Recipient wore civi	alc of New Y	ork and was		
Other	MAZE.	WELL CHOUSE		TIN1	
[X] "Jane	Doe" stated that the Defendant is not in the military.	1 //	CAT 1		
	The me on this year of 5-11		1/1/1/5	্	
Sworn to be	fore my compile flay of 57	-/-/	16/16/		
/	W // X	Aston G. E			
/ <i>-</i>	1 St her Fy	UC# 1220	009		
	County of Brown Church Whereh				
V	Lie Mr. will Assessas y				
(Lie. Nr. U. 97 . A6042818 Summister English June 3,20_1 5				

CIVIL COU	RT OF THE CITY OF NEW YORK	Index No. 33659/11
COUNTYO	F BRONX	Filed:
Attorneys; K	avulich & Associates, P.C.	
Address: 30	Church Street, Suite 26, New Rochelle, NY 10	801 File No. 13816 14285
	2246 MEDOURD ALGORITE, N.Y. 104	801 Phetto.
	2246 WEBSTER AVENUE HDF vs.	· C.
544	ERNESTO NUNEZ.	
State of New Aston G. E	YOR COUNTY of Name of	
CHANN 25- T-AS	as il, being duly sworn deposes and says: of a party herein, is over 18 years of age. On May 14, 201	4 0-00
		the within Summons and
Complaint or	ERNESTO NUNEZ, Defendant therin named.	17 Table 17
Individua)		- the same
	By delivering a true copy of each to said recipient: depone served to be the person described as said person therein.	ent know the person
Corporation	By delivering to and leaving with and th	at deponent knew the
[]	person so served and authorized to accept service on behi	alf of the Corporation
Suitable Age		
Person [X]	Said premises is recipients [] actual place of business [) state.	() dwelling house within the
Affixing	By affixing a true copy of each to the door of said premise	
to Door	[] actual place of business [] dwelling house (place of	abode) within the state
O		
Mail Copy	On May 16, 2011 deponent completed service under the l	ast two sections by
[X]	depositing a copy of the Summons and Complaint to the a Class properly addressed envelope marked "Personal and	
	depository under the exclusive care and custody of the Un	
	of New York	
and discretion	Deponent was unable, with due diligence to find the making called thereat:	ecipient or a person of autable age
and cisco choi		
	On the day of at	
	On the day of at On the day of at	
Description [] Sex; F_0	A description of the Defendant, or other person served on 1 Color of skin: <u>BRN</u> Color of Hair: <u>BLK</u> Age; <u>45-50 Height</u>	Dehalf of the Defendant :: 5'5" Weight: 1501,BS
_	Deponent asked person spoken to whether the recipient w	
[X]	service of the United States Government or of the State of informed that the recipient is not. Recipient wore civilian	New York and was
Other [X] "lane l	Doe" stated that the Defendant is not in the military.	16 Kar
Caron to befo	on this te day of 57/	18641154
<i>5</i> ,0/	Asi	on G. Evans II
/	Lie	C# 1220069
C/A	Coney of Born	
	Cloy of March	
$\mathcal{L}_{\mathbf{z}}$	12. acM. Accesses	
C	Change 9 Think 14 0 1911 Acor 2816 - Ching Inc 5,20 L 4	
	,	D 400



Bronx County Chil Coun Civil Judgmont

Plaintiff(e):

Defendant(s);

Emesto Nunez:

Evelyn Martinez

2246 Webster Avenue, HDFC

Judgment Issued: On Default

Index Number: CV-933659-11/8X

On Motion of:

Kavulich & Associates PC

181 Westchester Avenue, Suite 500C, Port

Chester, NY 10573-

Amount cisimed Less Payments made	\$2,802,11	Index Number Fee	\$45.00	Transcript Fee	\$0.00
Late Counterclaim Offset	\$0.00	Consumer Cradk Fee	\$0.00	County Clork Fee	\$0.50
Interest 11/01/2005 at 9%	\$0.0\$	Service Fee	\$25.00	Enforcement Fee	\$40.00
Attorney Fees	\$1,563.58	Non-Mütary Fee	\$0.00	Other Disbursements	\$0.00
	\$0.00	Notice of Trial Fee	\$0.00	Other Costs	\$0.00
Cost By Statute	\$20.00	Jury Demand Fee	\$0.00		¥
Total Damages \$4.	365.69 Total Cos	sta & Disbursementa	\$130,00	Judgment Total	\$4,495.69
Ms			4	vangment tout	Φ¬,430.03

The following named parties, eddressed and identified as creditors below:

Plaintiff creditor(s) and address

(1) 2246 Webster Avenue, HDFC

2246 Webster AVenue, Bronx, NY 10457-

Shall recover of the following parties, addresses and identified as debtors below:

Defendant debtor(s) and address

(1) Emesto Nunez

550 Audubon Avenue, Apt. 56, New York, NY 10040-

(2) Evelyn Martinez.

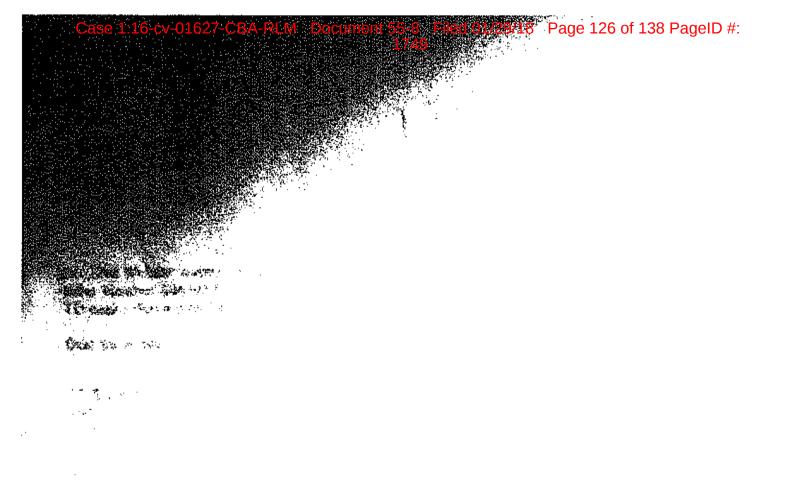
707 N. 6th Street, Apt. 2F, Allentown, PA 18102-

Judgment entered at the Bronx County Civil Count, 851 Grand Concourse, Bronx, NY 19451, in the STATE OF NEW YORK in the total amount of \$4,495.69 on 01/12/2012 at 08:58 AM.

Judgment sequence 3

Carol Alt, Chief Clerk Civil Court

Page 1 of 1





America's Most Convenient ##nk*

May 13, 2011

TD Sank, N.A. 1761 Route 70 East Cherry Hill, NJ 08034-5400 T: 888-751-9000 www.ufbank.com

3816

TD Bank, N.A. Levy Department P.O. Box 1880 Cherry Hill, NJ 08034

Kavulich & Associates, P.C. 181 Westchester Ave Suite 500C Port Chester, NY 10573

Re: 2246 Webster Avenue, HDFC v. Ernesto Nunez, Evelyn Martinez. Index Number: 046395-05

TD Bank reference number: 307947

Dear Sir or Madam:

TO Bank, N.A., is in receipt of the information Subpoena you served in connection with the above referenced matter. A search of our records indicates that TD Bank, N.A. maintains an account or accounts in the name of the debtor as set forth below. Please note that no funds have been restrained in connection with this matter as it was determined that (i) at the time of service the Restraining Notice was void pursuant to NY CPLR § 5222, § 5222(h). § 5222(i) and/or (ii) at the time of an Account Review there were no funds in excess of the Protected Amount as set forth in 31 CFR Part 212.

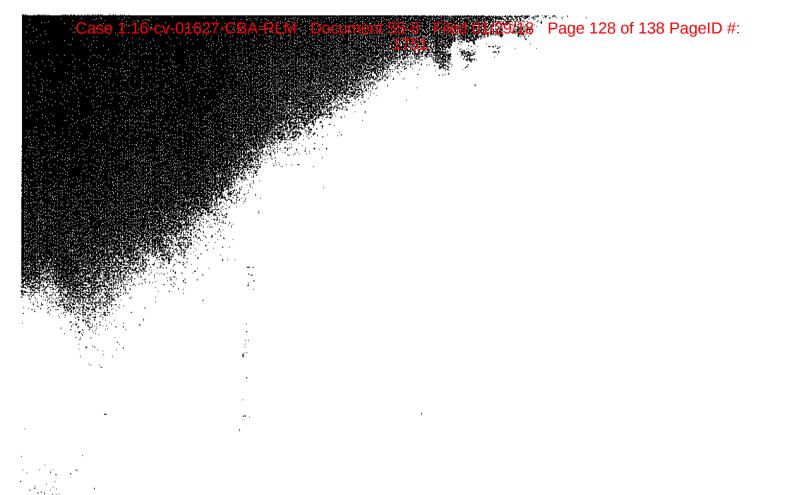
Account	Name	Amount
2893	Emosto J Nunez, Evelyn Martinez	\$15.95
Total	\$15.95	

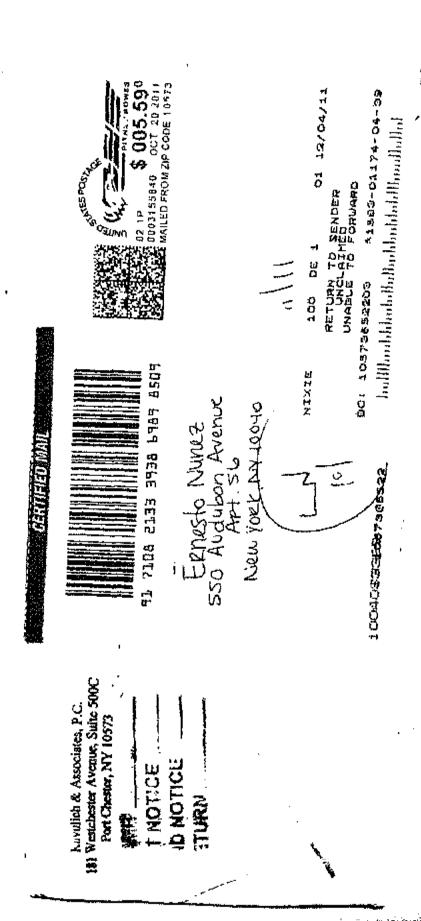
TD Bank, N.A.

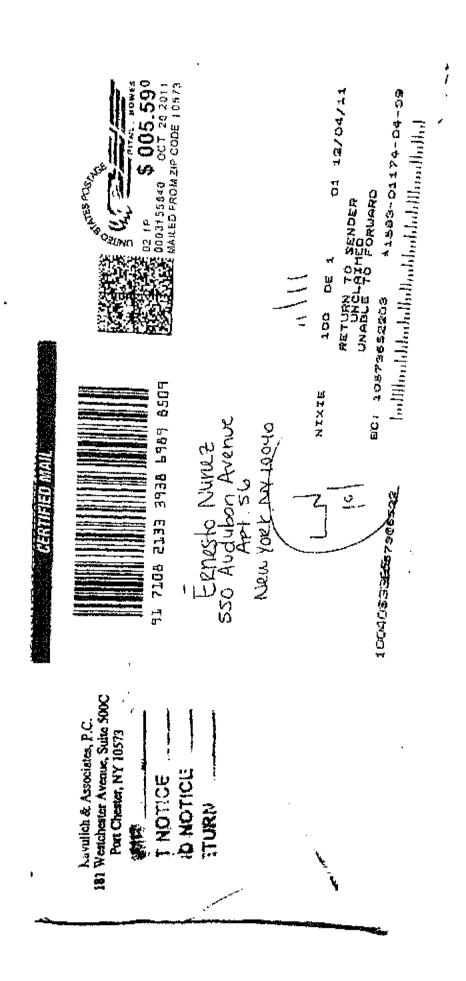
Sworn to before me this 13th day of May 2011

> HRISTINA BONCZAK NCHAPY PUBLIC HAVE OF NEW JEASE

化多联对 医舒护膜 经自由分配







COMPLETE THIS SECTION ON DELIVERY	A Signature C Agent X Addresses	B. Riscellust by (Printed Name) O. Detp of Delivery	D. Is delivery existence different from Item 17 Cl. Yes. 11 YES, enfor delivery address below: Cl. No.		Sarvice Type J. Sarvice Type J. Secretified Mail D. Bugatished Mail M. Regatished Mail M. Regatished Mail M. Regatished M. Regati	4, Restricted Delivery/ (Extra Fee) [] Yes	47, 71,08 21,33 3436 6464 8509	nam Receipt
SENDER: COMPLETE THIS SECTION	 Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. 	 Print your name and morecas on the name as of that we can return the card to you. Attach this card to the back of the maliplece. 	or on the front if space pertrets. 1. Article Addressed to:	Errusto Nunez	New YORK, NY 10040			The Section Photogram Photogram



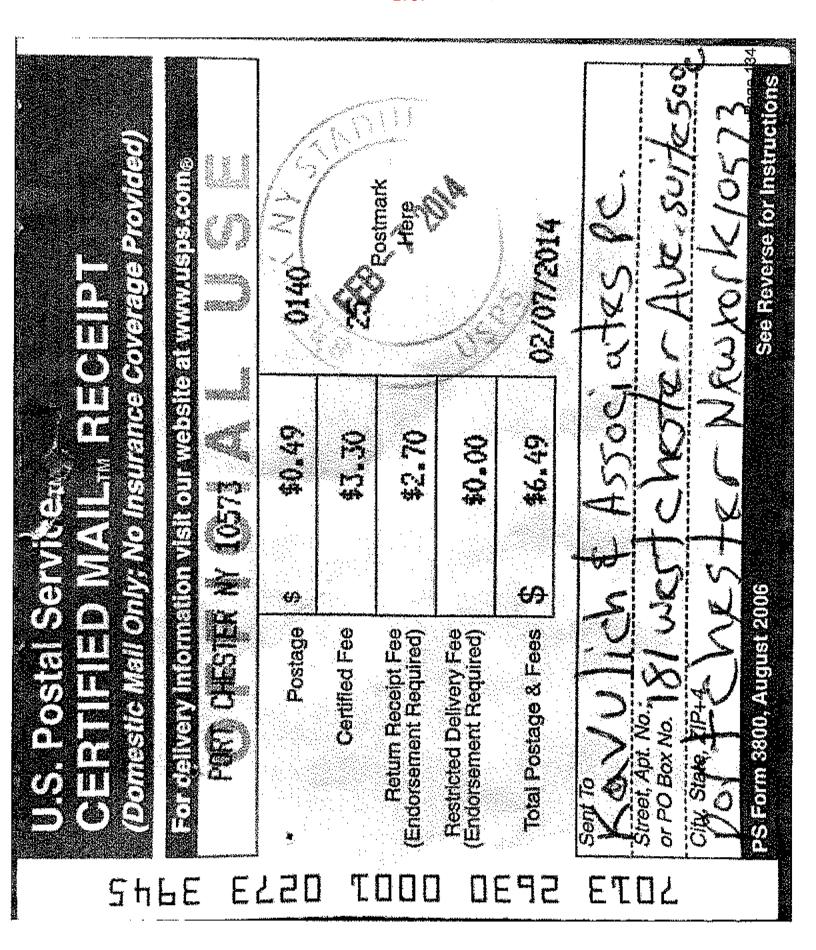


Registry-SafeRent

TENANT ACCOUNT RECORD REPORTING FORM

Property of the second
Purpose of this form: 1. Register a New Tenant 2. Report the Close of a Tenanty 3. Report the Performance of a Tenant INFORMATION MUST BE COMPLETE AND ACCURATE
INFORMATION MUST BE COMPLETE AND ACCURATE
Property Name: 2246 116 beto, An HOFC 3
Phone #: 7/8-295-2882 Contact Person: Jo Away
Contact Person: JO / H//
Address of Rented Premises: Webster And Apt#: 3
Street Address: 2296 Websles / The Apt#: 3
City: Brony State: N. 9. zip: 10457
Tenant Account Record is for:
Movo-inEvicted Skip Trace
Move-out (Satisfactory) Skipped Credit Gram
AMove-out (Unsatisfactory) Damages Payment Made
Move-in Date Move-out Date Last Paid Date
9-16-02 2-19-05
700
Rent Amount Balance Owing # of Payments Past Due
583.45 6986,98
List All Lease Holders for this Rental Unit (SSN is MANDATORY):
Last Name First Name M.I. Social Security# D.O.B
KILDEZ EURESTO 3547 80
NUMER EXPESTO 3547 80
Martinez Euclas 1227 22
Fax: Te: 1-800-866-7344 or

Fax. Te: 1-300-366-7344 or Mail To: Registry-SafaRent, Inc. Attn: Director of T.A.R.S P.O. Box 988 Longwood, FL 32782



Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 135 of 138 PageID #:

Civil Court of the City of New York County of Bronx

Index Number: CV-033659-11/BX

2246 Webster Avenue, HDFC

Plaintiff(s)

NOTICE OF MOTION

-against-

Ernesto Nunez; Evelyn Martinez

Defendant(s)

PLEASE TAKE NOTICE that upon the annexed affidavit of Ernesto Nunez

sworn to on _7th_ day of _February_, 2014_, and the exhibits annexed thereto, and upon all the prior pleadings and proceedings had herein, the defendant will move this court located at

851 Grand Concourse, Bronx, New York 10451 Part 34, 5th Floor, Room 503, on the 500.

day of March, 2014, at 9:30 am, or as soon thereafter as can be heard for an Order:

TO RESTORE THE CASE TO THE TRIAL CALENDAR FOR THE PURPOSE OF ENFORCING A DECISION/ORDER ENTERED ON 5/17/2013, BY HON. RUBEN FRANCO.

and for such other and further relief as this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that (check the applicable box below):

- Appearances are required on the return date of the motion by the moving party. The [X]non moving party(ics) should also attend to interpose any response.
- these papers have been served on you at least eight days before the motion is scheduled to be heard. You must serve your answering papers, if any, at least two days before such time upon the movant.
- these papers have been served on you at least twelve days before the motion is scheduled to be [X] heard. You must serve your answering papers, if any, at least seven days before such time upon the movant.

MAIL TO:

Kavulich & Associates PC (Counsel for Pltf) 181 Westchester Avenue Suite 500C

Port Chester, New York 10573

All answering papers to the Court are to be filed on the return date of the motion with the Clerk in the Part listed above.

February 7, 2014

, From: Ernesto Nunez

11 11d 1 - 3 - 1933 S. Front St

Allentown, Pennsylvania 18103

MIN DIMETTYS AY MOST by July 10 Condord by

HON, DONALD A. MILES

Case 1:16-cv-01627-CBA-RLM Document 55-8 Filed 01/29/18 Page 136 of 138 PageID #: 1759

Civil Court of the City of New York County of Bronx	Index Number: CV-033659-11/BX
2246 Webster Avenue, HDFC Plaintiff(s) -against-	AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION
Ernesto Nunez; Evelyn Martinez Defendant(s)	
Ernesto Nunez, being duly sworn, states that I would like to o	btain the following relief from the
Court:to restore the case to the trial calendar to enforce the d Ruben Franco	ecision/order dated 05/17/2013, by Hon.
The basis for my request is: because the	yudge orderd
to all garness mon	Ly to be returned
to me and they have	not complay
with the order, the w	relat gave-
fast time I spoke "	ith their
lawyer they said th	act I aliabre) +
haul any documents	that says
that the maney wa	a Quapaso to
bo redunded to m	1
WHERE ORE, THE UNDERSIGNED RESPECTFUL	I V PEOUEER THE WITHIN MOTEIN
BE GRANTED. Sworn'to before me this day of 2014	ET RESIDENTS THE WITHIN MOTION
COURT REV. ASST	Signature of Movant

Case 1:16-cv-01627-CBA-RLM Document 55-8. Filed 01/29/18 Page 137 of 138 PageID #:

